

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SFA SYSTEMS, LLC,)	
Plaintiff,)	
)	
VS.)	CIVIL ACTION NO.
)	6:07-CV-67
INFOR GLOBAL SOLUTIONS)	
(MICHIGAN), INC., et al,)	
Defendants.)	
)	

ORAL AND VIDEOTAPED DEPOSITION OF

J. TIPTON COLE

JULY 22, 2009

CONFIDENTIAL - ATTORNEYS' EYES ONLY

ORAL AND VIDEOTAPED DEPOSITION OF J. TIPTON COLE,
produced as a witness at the instance of the Defendants,
and duly sworn, was taken in the above-styled and
numbered cause on July 22, 2009, from 9:15 a.m. to 5:58
p.m., before Nita G. Cullen, CSR in and for the State of
Texas, reported by machine shorthand, at the Law Offices
of Thompson & Knight, 1722 Routh Street, Suite 1500, in
the City of Dallas, County of Dallas, State of Texas,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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214-747-8007

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1 PROCEEDINGS
2 (DEPOSITION EXHIBIT 1 MARKED.)
3 VIDEOGRAPHER: Today is July 22nd, 2009.
4 This is the videotaped deposition of J. Tipton Cole
5 taken in the case styled SFA Systems, LLC versus Infor
6 Global Solutions, Incorporated, et al, Civil Action No.
7 6:07-CV-67. The time is 9:15 a.m. We're on the record.
8 MR. SPANGLER: Are you on the record?
9 VIDEOGRAPHER: Yes.
10 MR. SPANGLER: Before we start, considering
11 where we are in the case, just letting you know, I am
12 invoking the rule today. So, how you want to handle
13 that with Maksim is your call.
14 MR. DION: I don't know if I follow.
15 You're --
16 MR. SPANGLER: The rule, invoking the rule
17 regarding witnesses at trial and hearing the testimony
18 of others. I mean, I thought you guys wanted to do it
19 with Tipton last week, but --
20 MR. DION: You know, Mr. Cole was in
21 Maksim's deposition last week.
22 MR. SPANGLER: And he was told you guys
23 might invoke the rule and he would have to leave, so --
24 MR. DION: I'm just not sure I understand
25 what the issue is.

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1 MR. SPANGLER: Other than your attorneys
2 and a corporate designee, no one else is allowed to
3 participate in the deposition, just like hear their
4 testimony, just like you would at trial.
5 MR. DION: I understand, but as I said, we
6 had Mr. Cole, we allowed him to sit in on the deposition
7 last week.
8 MR. SPANGLER: I understand. That was your
9 choice, and we're making the choice to invoke it today.
10 MR. DION: Which means that if we allow him
11 to sit here, you're going to oppose him testifying as a
12 witness at trial?
13 MR. SPANGLER: He's not allowed to sit
14 through.
15 MR. ZAHER: Counsel, you made no such
16 objection last week. You did not give us an indication
17 you were going to object to our witness being present.
18 We went to a great deal of time and expense to bring him
19 here. Our witness is going to stay in the deposition.
20 If you want to bring this to the Court's
21 attention, I suggest you do it now, but your witnesses
22 were not excluded from our depositions. I would ask the
23 same courtesy from you. You're telling me you're not
24 going to give us that same courtesy?
25 MR. SPANGLER: I am telling you, I am

2 (Pages 2 to 5)

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<p style="text-align: right;">Page 6</p> <p>1 invoking the rule.</p> <p>2 MR. ZAHER: Okay. Well, we're going to</p> <p>3 keep our witness here. We can address this either at</p> <p>4 the time of trial or we can address it now with the</p> <p>5 Court.</p> <p>6 MR. SPANGLER: Well, we have to address it</p> <p>7 now, and -- I mean, call up the hotline number. If this</p> <p>8 is something you want to do a hotline call about, that's</p> <p>9 fine. Do we have a teleconference phone number in</p> <p>10 there?</p> <p>11 MR. ZAHER: We have a machine here. Let's</p> <p>12 see if we can get the Court --</p> <p>13 MR. DION: Can we go off the record while</p> <p>14 we do some of the logistics?</p> <p>15 MR. SPANGLER: If we're discussing this, I</p> <p>16 want to keep it on the record.</p> <p>17 MR. DION: That's fine, if we're doing the</p> <p>18 logistics.</p> <p>19 MR. ZAHER: There's nothing further to</p> <p>20 discuss. We're going to call the Court.</p> <p>21 MR. SPANGLER: Right.</p> <p>22 MR. ZAHER: Okay. We can go off the</p> <p>23 record.</p> <p>24 VIDEOGRAPHER: The time is 9:18, we're</p> <p>25 going off the record.</p>	<p style="text-align: right;">Page 8</p> <p>1 he wasn't -- okay. Again, Infor's position is that this</p> <p>2 witness -- or I should say our expert witness, Mr.</p> <p>3 Kouznetsov, was engaged by Infor as an expert. He's</p> <p>4 only been approached to work on this case as an expert.</p> <p>5 He is a party to the confidentiality agreement. His</p> <p>6 information has been provided to SFA.</p> <p>7 SFA's made no such objection, prior to this</p> <p>8 deposition, seeking to exclude Mr. Kouznetsov from</p> <p>9 participating in this and working with counsel in</p> <p>10 support of this deposition. We disagree that he is a</p> <p>11 fact witness. He did work for the company many years</p> <p>12 ago. You've had plenty of time to seek fact witnesses</p> <p>13 that you need.</p> <p>14 Discovery is closed in this case, and we</p> <p>15 are going to retain the assistance that we need -- the</p> <p>16 assistance of Mr. Kouznetsov in this deposition, and</p> <p>17 he's going to remain in this deposition as support as an</p> <p>18 expert witness.</p> <p>19 MR. SPANGLER: I don't have anything to</p> <p>20 add. We already stated our position that he could stay.</p> <p>21 Go ahead, Mr. Dion.</p> <p>22 MR. DION: Thank you.</p> <p>23 COURT REPORTER: Any stipulations?</p> <p>24 MR. SPANGLER: Just to keep it AEO is what</p> <p>25 I understand.</p>
<p style="text-align: right;">Page 7</p> <p>1 (OFF THE RECORD FROM 9:18 TO 9:33 A.M.)</p> <p>2 VIDEOGRAPHER: Time is 9:33, we're back on</p> <p>3 the record.</p> <p>4 MR. DION: Joel Dion, here on behalf of</p> <p>5 Defendant Infor. With me in the room is Maksim</p> <p>6 Kouznetsov, as well as Bruce George, Alfred Zaher and</p> <p>7 John Paul Oleksiuk, the last three who are all also with</p> <p>8 Blank Rome.</p> <p>9 MR. SPANGLER: Andrew Spangler on behalf of</p> <p>10 the Plaintiff. With me today is David Pridham, Ryan</p> <p>11 Brown, Kip Glasscock. The parties just went off the</p> <p>12 record to discuss an issue regarding the participation</p> <p>13 of Maksim Kouznetsov.</p> <p>14 As part of that discussion, local counsel,</p> <p>15 that would be me, Andrew Spangler, had a teleconference</p> <p>16 with Alan Gardner. After discussing that, with</p> <p>17 preserving our objection that we believe Mr. Kouznetsov</p> <p>18 is a fact witness improperly withheld, we will allow him</p> <p>19 to sit through this deposition.</p> <p>20 MR. ZAHER: This is Alfred Zaher, lead</p> <p>21 counsel for Infor. Mr. Spangler, is Mr. Brown an</p> <p>22 attorney for your firm?</p> <p>23 MR. SPANGLER: He's an attorney</p> <p>24 representing SFA that works with my firm.</p> <p>25 MR. ZAHER: Good. I just want to make sure</p>	<p style="text-align: right;">Page 9</p> <p>1 MR. DION: The deposition is going to be</p> <p>2 protected, Attorneys' Eyes Only.</p> <p>3 J. TIPTON COLE,</p> <p>4 having been first duly sworn, testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. DION:</p> <p>7 Q. Mornng, Mr. Cole.</p> <p>8 A. Good morning.</p> <p>9 Q. I've provided you, before we went on the</p> <p>10 record, copies of your report and -- as well as the</p> <p>11 exhibits to your report. The Court Reporter has been</p> <p>12 given a compact disk with those in electronic form,</p> <p>13 which I believe has been marked as Exhibit 1 to your</p> <p>14 deposition, but for your reference during the</p> <p>15 deposition, those in paper form are there.</p> <p>16 Could you just take a look at that? I</p> <p>17 understand it's a very substantial document, but a quick</p> <p>18 maybe perusal, and let me know if it appears to be</p> <p>19 complete?</p> <p>20 MR. SPANGLER: Joel, I hate to interrupt,</p> <p>21 but just to make it clear, was Craig Thompson's disk</p> <p>22 Exhibit 1, also? It was? Okay. Thank you.</p> <p>23 A. Yeah. I got to believe that's right.</p> <p>24 Q. That's a lot of paper.</p> <p>25 A. They seem to have the last pages in them, so I</p>

3 (Pages 6 to 9)

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<p style="text-align: right;">Page 10</p> <p>1 suspect they're okay.</p> <p>2 Q. When were you first engaged by SFA to work on</p> <p>3 this matter?</p> <p>4 A. I don't really recall. Sometime last fall.</p> <p>5 Q. Sometime in the fall of 2008?</p> <p>6 A. I believe so, yeah.</p> <p>7 Q. And at that time, what is it that they asked</p> <p>8 you to do?</p> <p>9 A. To serve as a technical expert, examining</p> <p>10 the -- this lawsuit.</p> <p>11 Q. Anything more specific than that?</p> <p>12 A. No.</p> <p>13 Q. And I assume you're charging them for your work</p> <p>14 on this matter?</p> <p>15 A. Yes.</p> <p>16 Q. And what rate do you charge?</p> <p>17 A. \$525 an hour.</p> <p>18 Q. And do you know, approximately, how much you've</p> <p>19 billed to date in this case?</p> <p>20 A. Not really. Probably somewhere 250, 300 hours,</p> <p>21 something like that.</p> <p>22 Q. Have you ever worked on any other cases for</p> <p>23 SFA?</p> <p>24 A. No.</p> <p>25 Q. Have you ever worked on any other cases where</p>	<p style="text-align: right;">Page 12</p> <p>1 A. I was disclosed in a case. I'm having trouble</p> <p>2 calling up the plaintiff's name.</p> <p>3 Q. It's not a memory test, so to the extent it</p> <p>4 might be part of your report, feel free to refer at this</p> <p>5 time.</p> <p>6 A. Actually, it's probably in my CV, because I</p> <p>7 gave a deposition in the case.</p> <p>8 Q. Okay. Could we take a look? Is that Exhibit 1</p> <p>9 to your report?</p> <p>10 A. I don't know. Yes. Taurus IP.</p> <p>11 Q. And it's on this list twice. Do you know why</p> <p>12 it's on the list twice?</p> <p>13 A. I gave two depositions.</p> <p>14 Q. Why two depositions?</p> <p>15 A. I did two reports. I don't know why I gave two</p> <p>16 depositions. They're split by month, though, so --</p> <p>17 Q. Did the two reports address different issues?</p> <p>18 A. I honestly don't recall.</p> <p>19 Q. Do you recall if they were both about</p> <p>20 infringement or both about validity?</p> <p>21 MR. SPANGLER: Objection, form.</p> <p>22 A. I did reports on both issues. That's probably</p> <p>23 the distinction.</p> <p>24 Q. So, your recollection is you did one report on</p> <p>25 infringement, and then a separate report on validity?</p>
<p style="text-align: right;">Page 11</p> <p>1 Mr. Spangler was an attorney?</p> <p>2 A. I've met Mr. Spangler before, but I don't know</p> <p>3 if I worked on a case with him.</p> <p>4 Q. What about Mr. Pridham?</p> <p>5 A. Again, I don't know whether he was in a case</p> <p>6 I've been in.</p> <p>7 Q. Do you know an attorney by the name of John</p> <p>8 Edmonds?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever been engaged as an expert on any</p> <p>11 matters where he was counsel?</p> <p>12 A. Not that I'm aware of.</p> <p>13 Q. To your knowledge, have you ever worked as an</p> <p>14 expert for any other matters for companies that were</p> <p>15 owned or controlled by Mr. Spangenberg?</p> <p>16 MR. SPANGLER: Objection, form.</p> <p>17 A. I believe I have, yes.</p> <p>18 Q. Which other matters do you believe those to be?</p> <p>19 A. I need to ask here whether cases where I wasn't</p> <p>20 disclosed as an expert count on this stuff.</p> <p>21 MR. SPANGLER: You are not to disclose if</p> <p>22 you were a consulting expert. I'm instructing you not</p> <p>23 to answer the question. If you did a deposition or</p> <p>24 report or testified at trial, you can answer his</p> <p>25 question.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Correct.</p> <p>2 Q. Were you asked to give any opinions on validity</p> <p>3 in this matter?</p> <p>4 A. No.</p> <p>5 MR. SPANGLER: Objection, form.</p> <p>6 Q. (By Mr. Dion) If we could go back to</p> <p>7 Exhibit 1, which is your resume, looks like from 1983 to</p> <p>8 2007, you have yourself listed as president of Tipton</p> <p>9 Cole & Company?</p> <p>10 A. Correct.</p> <p>11 Q. And the description of that is, primarily, as a</p> <p>12 software development and consulting company?</p> <p>13 A. Yes.</p> <p>14 Q. And then 2008 to the present day, the same</p> <p>15 company, but you have a different role and a different</p> <p>16 description. What's the difference between your role as</p> <p>17 president up until 2007 and your role as proprietor</p> <p>18 since 2007?</p> <p>19 A. Mostly have to do with the fact that I closed</p> <p>20 down the C type corporation that I had, and, also,</p> <p>21 recognizing the fact that I'm doing very little computer</p> <p>22 development these days.</p> <p>23 Q. So, since 2008, it looks like that you're</p> <p>24 primarily doing expert witness type work?</p> <p>25 A. Well, consulting work.</p>

4 (Pages 10 to 13)

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<p style="text-align: right;">Page 14</p> <p>1 MR. SPANGLER: Object to form. 2 Q. (By Mr. Dion) Consulting work primarily 3 related to IP litigation? 4 A. Correct. 5 Q. What percentage of your work is as a consulting 6 expert, as compared to as a testifying expert? 7 A. Probably most of it. 8 Q. Most of it is which? 9 A. I'm sorry. Most of it is as a consulting 10 expert. 11 Q. The last question was maybe a bad question. 12 A. That's all right. 13 Q. Did you have any role in preparing infringement 14 contentions in this case? 15 A. My role was to discuss things with the 16 attorneys. I did not draft the infringement -- 17 MR. SPANGLER: I'll at this point remind 18 that we have a stipulation and instruct my witness not 19 to disclose any of the communications or drafts of 20 documents leading up to your report. 21 A. Right. 22 Q. Did you prepare the exhibits to your report? 23 A. Did I prepare them? Some of them, yes. 24 Q. What do you mean by that? 25 A. Well, I wrote the CV.</p>	<p style="text-align: right;">Page 16</p> <p>1 report? Expert report? 2 A. Each of those exhibits was prepared, in part, 3 by me, and in conjunction -- the rest of it in 4 conjunction with the attorneys, but the exhibits are 5 mine. They're incorporated in my reports and they're 6 mine. 7 Q. You reviewed source code as part of your 8 investigation into the accused products, is that right? 9 A. I did. 10 Q. How did you go about the source code review? 11 What was the process you used to try and determine which 12 source code you thought was relevant and which pieces 13 you wanted to look at? 14 MR. SPANGLER: Objection. I believe that's 15 covered within the stip. Hold on. 16 A. I'm sorry. 17 MR. SPANGLER: You can answer that 18 question. 19 A. Okay. First off, I'm not sure about relevance, 20 its relevance, but the mechanism that I used was to 21 first take inventory of the source code that was 22 produced and to begin examining different code in 23 different areas, looking for support for what I was 24 seeing in the documentation. 25 The purpose of the source code review is,</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. What about Exhibits 3, 4 and 5? 2 A. 3, 4 and 5 are all exhibits that I -- I'm not 3 sure how to answer this, now. 4 MR. DION: I think I'm entitled to explore 5 whether or not it's his work product, so -- 6 MR. SPANGLER: Well, you're not -- well, 7 the stip is what the stip is, and we can look at that. 8 I'm trying to think of a way to give you your answer 9 without revealing, so just -- 10 MR. DION: Okay. 11 MR. SPANGLER: I'm working on giving you 12 the information, how to do it accurately. 13 MR. DION: Okay. 14 MR. SPANGLER: Can I talk with him real 15 quick off the record? I want to give you your answer. 16 MR. DION: Absolutely. 17 VIDEOGRAPHER: The time is 9:44, we're off 18 the record. 19 (OFF THE RECORD FROM 9:44 TO 9:45 A.M.) 20 VIDEOGRAPHER: The time is 9:45, we're back 21 on the record. 22 MR. SPANGLER: Joel, could you re-ask the 23 question, please? 24 Q. (By Mr. Dion) Yeah, the question was 25 whether -- did you prepare Exhibits 3, 4 and 5 to your</p>	<p style="text-align: right;">Page 17</p> <p>1 primarily, to make sure that I'm reading and 2 understanding the documentation properly. So, the 3 source code review was guided by what I was reading in 4 the document, trying to find things that corresponded to 5 what I saw. 6 Q. When you say guided by what you were reading in 7 the documents, do you mean that you were only looking at 8 source code that was referenced in the documents? 9 A. Well, relatively little of the source code is 10 directly referenced in the documents. We were just 11 looking for those parts of the source code that we 12 thought would help us understand what the system was 13 actually doing. 14 Q. So if you felt that from the documentation you 15 were developing an opinion that the system had a certain 16 functionality, you would then try to locate source code 17 that verified or confirmed that opinion? 18 A. In some instances, yes. 19 Q. How did you go about trying to find the 20 particular source code that might support -- 21 A. It's -- it's -- you just have to look. I mean, 22 the -- some of the source code is written in such a way 23 that either program names or procedure names or 24 variables reveal what's going on in the code. Comments 25 in the code can tell you what's going on. We wrote</p>

5 (Pages 14 to 17)

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1 routines to --

2 MR. SPANGLER: I'm going to object at this
3 point. Anything you wrote, notes that you took or any
4 written conduct by you is protected by the stipulation.
5 Your general procedure, you are to answer his question.

6 A. All right. Fair enough. We reviewed both the
7 direct content of the code; that is, the programming
8 language work, and we also reviewed comments in the
9 code. Comments are -- don't tell you what actually
10 happened, the code tells you what actually happened, but
11 the comments can direct you to the right places.

12 So we used that. We used markers in the
13 documentation that would occasionally mention something
14 that looked like it belonged in the source code, and we
15 would go search for that. Any number of things like
16 that. But it's an exploration to go in and look for.

17 Q. Did you use search terms to help you find
18 pertinent source code?

19 A. Well, we did searches. We did searches based
20 on strings of characters that we thought were
21 significant, yes.

22 Q. Do you recall the strings of characters that
23 you thought were significant?

24 A. No.

25 Q. Last week, you sat in on Mr. Kouznetsov's

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1 deposition, is that right?

2 A. For some of it, yes.

3 Q. Have any of your opinions changed, based on
4 sitting in on that deposition?

5 A. No.

6 Q. Now, having sat in on that deposition, are you
7 relying at all on the testimony that you heard to
8 support the opinions in your report?

9 A. To support the opinions in my report? No.

10 Q. Do you believe the testimony does support the
11 opinions that are in your report?

12 A. The -- most of Mr. Kouznetsov's testimony
13 contradicted the opinions in my report.

14 Q. If you could turn to the first page of your
15 actual report, and I promise we're not going to go
16 through all these documents one page at a time.

17 A. That's okay.

18 Q. In the first paragraph, and I understand this
19 is just introduction, but the end of the last sentence,
20 it says that in the litigation, SFA has asserted that
21 certain Infor products infringe, and it lists
22 Interaction Adviser, IA, Sales & Service or S&S, and
23 Outbound Marketing or OM, and then it says individually
24 and including as integrated together as part of the
25 E.piphany Suite. Do you see that?

Page 20

1 A. Yes.

2 Q. Is it your understanding that SFA has asserted
3 that Sales & Service as a stand-alone product infringes
4 the '525 Patent?

5 MR. SPANGLER: Objection, form.

6 A. I believe that in the report I actually only
7 address the combination of Sales & Service with
8 Intersection Adviser.

9 Q. So you have not offered an opinion that Sales &
10 Service as a stand-alone product infringes the '525
11 Patent.

12 A. I don't believe so, no.

13 Q. But you do believe that Interaction Adviser
14 infringes the claims of the '525 Patent or the claims
15 discussed in your report, as a stand-alone product, is
16 that correct?

17 MR. SPANGLER: Objection, form.

18 A. Yes, I do.

19 Q. In the combination of IA and integrated with
20 S&S, which of the claim elements do you believe read on
21 the Sales & Service product?

22 A. On the Sales & Service product? I'm not sure
23 that I ever expressed it quite that way. I believe I
24 expressed it as a combination, and the statement, I
25 think, is pretty straightforward.

Page 21

1 Q. If you would, could you just identify which
2 page of your report you're looking at?

3 A. Right. I thought that we would just start with
4 Claim 1, Element A-1, page 121 of the report, discussing
5 the integration of Interaction Adviser with S&S. And
6 the statement is that I previously analyzed the IA and
7 determined that it infringed the patent on its own, and
8 that as a logical necessity, the combination of IA and
9 S&S also infringes the patent.

10 Q. And I think we could agree that's the language
11 for Claim 1, Element A-1, but I think we could agree
12 that that similar language was then followed for all the
13 rest of the claims?

14 A. I believe it's similar language for virtually
15 everything in there, yes.

16 Q. So the allegation that IA integrated with S&S
17 infringes is because IA infringes by itself?

18 MR. SPANGLER: Objection, form.

19 A. That's a basis for it, yes.

20 Q. So, I guess what I'm trying to understand is,
21 in that system of IA integrated with S&S, what is it
22 that S&S actually adds to the system that changes or
23 affects or has an impact on the way the system
24 infringes?

25 MR. SPANGLER: Objection, form.

6 (Pages 18 to 21)

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1 A. Straightforwardly, S&S is a subsystem that --
2 of a combined -- the patent addresses a system and then
3 addresses subsystems within a system. The addition of
4 S&S expands the scope of the initial system that we're
5 talking about.

6 The initial system in the early analysis is
7 IA. You expand the system to include IA and S&S, and
8 that expanded system infringes the patent.

9 Q. And S&S would be one of the subsystems?

10 A. Would also be a subsystem within the system,
11 correct.

12 Q. Does IA need to have S&S as a subsystem to meet
13 the limitations of, for instance, Claim 1?

14 MR. SPANGLER: Objection, form.

15 A. No.

16 Q. I think you said, and I may be misquoting, but
17 if I'm mischaracterizing your testimony, please correct
18 me, but I think you said along the lines that the system
19 of IA and S&S integrated together necessarily infringe
20 because IA alone infringes.

21 A. That's close, yes.

22 Q. So, then, is it your opinion that a system made
23 up of IA integrated with any other piece of software
24 would be an infringing system?

25 MR. SPANGLER: Objection, form.

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1 A. Not necessarily, no. I'm assuming that you're
2 going to combine it with something that would
3 effectively debilitate some feature of IA, but as, for
4 instance, in here, IA combined with OM I believe
5 qualifies as such a thing, but I wouldn't apply that as
6 a blanket -- as a blanket proposition, no.

7 Q. What if I qualified it to say, IA integrated
8 with any other system, so long as the integration
9 doesn't diminish IA's functionality?

10 MR. SPANGLER: Objection, form.

11 A. That's at least possible, then I run into
12 problems of patent doctrine that I simply don't know,
13 that may militate against that. I honestly don't know.

14 Q. I understand it's a broad question and, you
15 know, to say "yes" to every example is a lot to ask.
16 Does the system of IA integrated with S&S work
17 differently than IA standing alone?

18 MR. SPANGLER: Objection, form.

19 A. It accomplishes additional things, yes.

20 Q. What are those additional things?

21 A. All those capabilities that S&S brings to the
22 party.

23 Q. Do any of the capabilities that S&S brings to
24 the party relate to any of the elements in, for
25 instance, Claim 1 of the '525 Patent?

Page 24

1 A. Yes. It certainly qualifies as a subsystem
2 named in that claim.

3 Q. Anything other than that?

4 A. I don't think I've addressed anything other
5 than that, but it may, yes.

6 Q. But if we were to look at kind of some of
7 the -- some of the items that are called out in, for
8 instance, Claim 1, the event manager is still within IA,
9 is that correct?

10 A. Correct.

11 Q. And the detection of any change in state that
12 you assert still occurs within IA, is that correct?

13 A. That's a function of the event manager, so yes.

14 Q. And as well as the inferring also occurs within
15 IA?

16 A. It's also part of the event manager, correct.

17 Q. And the automatic initiation step or process,
18 again, also within IA?

19 A. Yes.

20 Q. What do you understand S&S's functionality to
21 be, generally?

22 A. Just what it says, it's a support system for
23 Sales & Service, and, you know, it has a lot of
24 functionality. We can pull out the claim chart and
25 start talking about it, if you'd like.

Page 25

1 Q. I don't know that we need to go into that level
2 of detail.

3 A. Okay.

4 Q. So I'd like to go now to the section of your
5 report that addresses Interaction Adviser standing
6 alone. I think the claim analysis at least starts on
7 page 15 or the bottom of 14.

8 A. Okay.

9 Q. When you say that IA infringes standing alone,
10 the preamble calls out -- well, let me back up a step.
11 In your view, do you think that in, for instance, Claim
12 1 of the '525 Patent, is the preamble a limitation on
13 the scope of that claim?

14 MR. SPANGLER: Objection, form.

15 A. I don't know. I don't know whether it's a
16 limitation on the claim.

17 Q. In your analysis, did you look to see if, in
18 your opinion, the system satisfied the language of the
19 preamble?

20 A. Yes.

21 MR. SPANGLER: Objection, form.

22 Q. (By Mr. Dion) So, the preamble calls out a
23 computer implemented sales system. What is the system
24 that you analyzed when you looked at Intersection
25 Adviser?

7 (Pages 22 to 25)

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<p style="text-align: right;">Page 26</p> <p>1 MR. SPANGLER: Objection, form. 2 THE WITNESS: Pardon me. 3 MR. SPANGLER: Give me a little bit of time 4 to put objections on the record, please. That was 5 "objection, form," in case you didn't get it. 6 A. Interaction Adviser is the Interaction adviser 7 product, as described in the documentation. 8 Q. And maybe this is a silly question, but when 9 you were analyzing this, you didn't look at Interaction 10 Adviser, for this section, connected to anything else, 11 is that right? 12 A. Well, Interaction Adviser is the system of the 13 claim language, and there are connections within it that 14 I reviewed, but I didn't worry with its connection to 15 anything else. 16 Q. What is, in your view, sales? 17 A. Sales? 18 Q. Sales. 19 A. Well, the core of sales is the transfer of 20 goods or services for money. 21 Q. Did you ever -- did you look at these systems 22 to determine if, in your opinion, they were sales 23 systems? 24 A. Yes. 25 Q. And, in your opinion, IA is a sales system.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. That's part of the explanation. It's not just 2 the legacy system, but it's newly developed systems, as 3 well. Yes, it's aimed at taking, like I said, just 4 systems that are separated, for some reason, because 5 they came from different vendors, because they were 6 developed at different times, because the design of the 7 system was insular, for some reason, and breaking down 8 the barriers between them so that the information into 9 the system from the outside and -- well, I'm sorry -- 10 within the system, that the information would flow more 11 quickly and promote the sales process. 12 Q. Does the '525 Patent define specific phases of 13 the sales process that are contemplated by the 14 invention? 15 A. I believe it mentions some phases. I don't 16 think it defines phases, specifically, no. 17 Q. What's your understanding of how Interaction 18 Adviser works? 19 A. Well -- 20 Q. And I understand that's a broad question. 21 We're obviously going to get into it in some detail as 22 we talk about the claim elements. I guess I kind of 23 want to understand your big picture view of what IA is 24 and what it does. 25 A. In the big picture, IA is meant to serve an</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Yes. 2 Q. What are the phases of the sales process? 3 A. What are the phases of the sales process? It's 4 a pretty broad description, but they are -- those are 5 the activities that are involved in bringing a product 6 to sell, building its market, influencing the purchasing 7 and buying of the product and satisfying the sale. Not 8 that there are only three phases to the process, but it 9 covers a lot of ground. 10 Q. Sure. Would you agree with this -- or maybe 11 you won't -- but other people in the case have kind of 12 characterized the invention this way. Do you view it as 13 a system, and the goal of that system is to automate at 14 least some of the tasks that are typically carried out 15 by a salesperson? 16 MR. SPANGLER: Objection, form. 17 A. I would say that's part of what it's aimed at, 18 yes. But as much as that, it's aimed at breaking down 19 the barriers between automated systems that might be 20 used separately and the promotion of sales. 21 Q. Those barriers -- you said barriers between 22 automated systems. So those were kind of Legacy 23 automated systems, and the goal here was to try and, I 24 guess, find a way for those to work together? 25 MR. SPANGLER: Objection, form.</p>	<p style="text-align: right;">Page 29</p> <p>1 interactive process, hence its name, I suppose. And 2 it's attempting to connect people at the customer end of 3 the sales process back with information that an 4 organization gathers over time, and it's simultaneously 5 adapting to the success or failure of some of the sales 6 operations. 7 Q. It's adapting to the success or failure of some 8 of the sales operations? What do you mean by that? 9 A. What I mean by that is that as transactions, 10 sales transactions, offers, acceptances, and so forth, 11 take place within the system, that it's keeping track 12 and adjusting its behavior based on the success or 13 failure of different promotions, operations, offers, 14 campaigns. 15 Q. Could you give me one example, and I certainly 16 understand this is not likely to be the only example, 17 but an example of what IA does kind of as it relates to 18 the claims? I mean -- let me withdraw that. I think 19 that's going to draw an appropriate objection. 20 MR. SPANGLER: It was coming. 21 Q. (By Mr. Dion) Could you describe your view of 22 how IA functions when, say, the customer service 23 representative at a call center, for instance, interacts 24 with a customer, what does IA do? 25 MR. SPANGLER: Objection, form.</p>

8 (Pages 26 to 29)

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1 A. Take a simple example. Let's say that a
2 customer, you talk about customer service, a customer
3 calls in with a complaint, I ordered this gizmo and it
4 hasn't arrived yet, it arrived late, it was broken when
5 it arrived, I got the blue one instead of the red one,
6 whatever his complaint is, he has a complaint.

7 He identifies himself to the sales agent.
8 The sales agent records the fact that this fellow is
9 complaining about his gizmo or about -- and sends that
10 information into IA -- you know, from one of the client
11 systems, you know, call center, and he sends that
12 information into the IA's RT server.

13 RT server gets that complaint, and once the
14 complaint arrives, he says, something's up, and he
15 starts unpackaging the complaint information. He
16 figures out from -- actually, go back. When he gets the
17 message, it's just a message. He doesn't even know it's
18 a complaint.

19 Q. I'm sorry, when you say "he" --

20 A. I'm sorry. He. RT server. Computer geeks, we
21 often personalize these things. So RT server will be
22 "he" henceforth. But when RT server gets the message
23 from the client, he knows something's up, but he doesn't
24 know what.

25 He unpacks the message, and he says, ah,

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1 it's a complaint message. I have some idea of what I
2 need to do. I should be looking for, among other
3 things, I should be looking for the I.D. of the
4 complainer, and I probably should be looking for some
5 identifier that tells me what he's complaining about.

6 He unpacks those things from messages, and
7 based on the fact that he has a complaint, he
8 understands which of his subsystems he needs to go to,
9 and he analyzes then the information he has on the
10 customer.

11 If it's a first time customer, he might
12 just say, tough luck. If he's a long-time customer, he
13 might say, you know, we need to keep this guy, he's a
14 big dollar guy, let's offer him tickets to something or
15 let's offer him a discount on what we just sold him or
16 let's offer him something to mollify him.

17 And it will put together whatever's
18 appropriate for that customer, for that level of sales,
19 for the history that that customer has and pass those
20 recommendations back to the call center operator, who
21 then -- or to the software that the call center operator
22 is using.

23 And that software then displays those
24 options on the screen and the call center operator looks
25 at it and starts working through his options with that

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1 customer. Perhaps we can make you happy with this. And
2 if he gets a good reaction, then that may settle it.

3 If he doesn't get a good reaction to the
4 first one, he may ask him, well, how about if we did
5 this, then, instead, or in addition to what I offered
6 before? So, what's happening there is that IA, because
7 it's accumulating all this historical information on the
8 customer, because it has -- because it has knowledge of
9 how other customers in similar circumstances react,
10 because it has knowledge of how this customer and -- you
11 know, historically has reacted, it's filtering through
12 the many possibilities that it has to respond. So,
13 that's roughly what I see IA doing.

14 Q. Okay. Thank you. And I understand, like I
15 said, that's one example. I certainly don't expect that
16 it's the only example. But there's a couple of things
17 you discussed in there that I want to just follow up on
18 a little bit. So, in this scenario, we had a customer
19 calling in, that customer had a complaint about
20 something.

21 Is it your understanding that IA treats
22 that type of request to the RT server; that is, a
23 request derived from a customer complaint differently
24 than if the request comes in because the person called
25 in for some other reason?

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1 MR. SPANGLER: Objection, form.

2 A. Well, it certainly treats it differently in the
3 sense that if a person calls in to order the latest set
4 of foot snuggies, he gets foot snuggly stuff back. If he
5 calls in about a complaint, he gets complaint stuff
6 back. So, yes, they're treated differently.

7 Q. Did you come across anything in the
8 documentation of IA that talks about handling
9 complaints?

10 A. I think one of the examples in the -- in one of
11 the manuals dealt with it in some detail.

12 Q. Do you recall what -- where that might have
13 been? I understand if you don't. I know there was a
14 lot of documents you looked at.

15 A. It's referenced early on in the IA claim chart.

16 Q. In your chart that you prepared for IA?

17 A. Yes.

18 Q. Do you think if you took a minute to flip
19 through, could you point me to that?

20 A. I think so.

21 Q. And IA chart is Exhibit 3?

22 A. Yes. Page 3.

23 Q. Okay. Could you show or tell me where on page
24 3 you see that?

25 A. In the third block of information under the

9 (Pages 30 to 33)

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<p style="text-align: right;">Page 34</p> <p>1 heading "A URL." 2 Q. Uh-huh. 3 A. Is a message, it's an http protocol message. 4 And you will see on the third line of that message it 5 has the "&Event=ComplaintEvent." 6 Q. Okay. And is that URL there, is that the 7 information passed to RT server from the other system? 8 A. Yes. It's an example of information that gets 9 from an RT client to RT server, yes. 10 Q. And then when RT server processes this event to 11 return offers, in this example, it would use the fact 12 that this was a complaint event in what way in 13 processing those offers? 14 MR. SPANGLER: Objection, form. 15 A. Based on the fact that it's a complaint event, 16 it calls some set of routines that it wouldn't call for 17 a sales event. It calls them with information or with 18 parameters, parameters that are different. 19 Q. Do you have an understanding of what those 20 other subsystems would be or those other processes would 21 be? 22 A. Generally, I believe this is -- a patent is 23 sent to RT miners or RT recommenders that then plow into 24 different databases, depending on rule sets that they 25 have within them.</p>	<p style="text-align: right;">Page 36</p> <p>1 customer transaction history or interaction history as 2 part of its process? 3 MR. SPANGLER: Objection, form. 4 A. I'm not sure if it keeps that -- each 5 interaction, you know, each sales detail, but certainly 6 it seems to keep cumulative information. 7 Q. When you say "cumulative information," what do 8 you mean? 9 A. Number of purchases, amount of dollars spent, I 10 think it keeps information -- I'm sorry, can keep 11 information on what items were purchased. 12 Q. So, cumulative information about an individual 13 customer, though, is what you meant? 14 A. Yes. 15 Q. Rather than cumulative information about 16 population of customers. 17 A. Well, for this customer, it builds profile 18 information that includes, you know, demographic type 19 stuff, where he's from, how old he is, some other things 20 like that. I think the exact detail that you can keep 21 on this stuff, at a certain level, I didn't pursue it 22 anymore, but it keeps -- yes, it keeps historical 23 demographic information on that person, whatever it 24 knows. 25 (MR. ZAHER LEAVES ROOM.)</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Is this example here, this complaint event, is 2 that something that's part of IA as it's delivered by 3 Infor to its customers? 4 A. This particular complaint event? I couldn't 5 tell you. I don't know for sure. 6 Q. The other thing I wanted to ask you about is, 7 in your example, you talked about that the system would 8 return certain offers, I guess resolutions, whatever 9 they might be in that case, and you said one of the 10 things that it would consider in making that decision is 11 he has information about this particular customer and 12 what this customer has done in the past? 13 MR. SPANGLER: Objection, form. 14 A. Perhaps. 15 Q. Is it your understanding that IA uses, you 16 know, typically uses a customer's transaction history as 17 part of its process? 18 MR. SPANGLER: Joel, finish this answer, 19 and if you could tie up a line of questions, one, I'd 20 like to take a break, and two, Kip and David are 21 leaving, so I don't want to have all that on the 22 videotape while that's going on. 23 MR. DION: Sure. 24 A. I'm sorry. Could you ask again? 25 Q. Is it your understanding that IA typically uses</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. DION: Okay. I think this will be a 2 good time to take a break. 3 VIDEOGRAPHER: The time is 10:18, we're off 4 the record. 5 (MR. PRIDHAM AND MR. GLASSCOCK LEAVE ROOM.) 6 (OFF THE RECORD FROM 10:18 TO 10:28 A.M.) 7 VIDEOGRAPHER: Time is 10:28, we're back on 8 the record. 9 Q. (By Mr. Dion) Okay. Before we took that 10 break, we've been discussing your opinions about 11 infringement by IA. There's also language in the 12 beginning of the preamble, similar language comes up in 13 some of the claim elements that says that this is a 14 sales system, computer implemented sales system that's 15 used to facilitate a sales process. What do you 16 understand that to mean? 17 MR. SPANGLER: I'm sorry, Joel, I missed 18 that. What page are you on? 19 MR. DION: Page 14 of his report. 20 MR. SPANGLER: Okay. Thank you. 21 A. To facilitate a sales process means that it 22 makes some part of the sales process easier, faster, 23 more convenient, more efficient, possible, any number of 24 things like that. 25 Q. And, again, the sales process being --</p>

10 (Pages 34 to 37)

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1 A. Virtually anything that assists in making the
2 sale, ultimately, to a customer.

3 Q. I just want to kind of explore that a little
4 bit, if we can. So, if we had to -- you know, a sales
5 organization and they have a receptionist and she
6 answers calls for the marketing department and the legal
7 department and the human resources department, she's
8 just -- you know, you call in for the number, you're not
9 dialing the 800 number to buy their product, you're
10 calling their office, she answers the phone. Is she
11 facilitating the sales process?

12 MR. SPANGLER: Objection, form.

13 A. To the extent that she can, yes.

14 Q. What do you mean by that?

15 A. Well, the customer calls in and says, I'd like
16 to talk to my salesman, the -- whether he's calling for
17 a complaint, like we talked about before, or calling to
18 buy something or calling to find out who is the salesman
19 for his region or whatever reason like that, her actions
20 can, do facilitate the sales process.

21 Q. Okay. Again, like I said, may seem a little
22 ridiculous, but I'm trying to kind of figure out how far
23 back this goes. The people that come in and clean at
24 night, do they facilitate the sales process?

25 A. I wouldn't think so, in the normal course, no.

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1 Q. I mean, obviously, we could get down to a
2 salesman picks up a phone and cold calls a customer or
3 takes a call from a customer, I think that's clearly
4 within the sales process. Somewhere -- I guess the
5 janitors, we can agree, are clearly outside of the sales
6 process.

7 A. As I said, in the normal course, yes.

8 Q. In the normal course. Is there any way that we
9 can kind of meaningfully define the boundaries there,
10 though?

11 MR. SPANGLER: Objection, form.

12 A. I'm not sure of a clean way of doing that.

13 Q. So, if we move on, then, the next element is
14 plurality of subsystems, and I'm on to page 15 of your
15 report. Plurality of subsystems configured to
16 facilitate one or more actions performed during at least
17 one phase of the sales process.

18 A. Yes.

19 Q. In the context of Claim 1, what type of actions
20 is this language referring to?

21 A. To facilitate one or more actions? Well, it
22 can be an action that is performed by some piece of
23 software in the system. It can be an action that's
24 performed by some person in the system, as well. Some
25 person interacting with the system.

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1 Q. Okay. Is there any limitation on the actions?
2 Let me kind of explain that a little bit. So, again,
3 we're talking about a sales process, we're also talking
4 about automation of that sales process. Obviously, if
5 we say, well, actions have to be performed by people, I
6 think we'd be somewhat missing the boat, because the
7 point of the system is to automate at least some of what
8 a person used to do, is that --

9 MR. SPANGLER: Objection, form.

10 A. Yes, I believe that the actions include actions
11 by parts of the system, rather than just people engaging
12 the system.

13 Q. I think I would agree with that, also. So I
14 guess my question then is more to the point, the actions
15 referred to here, which are actions performed during at
16 least one phase of the sales process, to the extent
17 those actions are carried out by the system rather than
18 a person, do they have to be actions that -- actions
19 that would typically be carried out by a salesperson,
20 what the system is automating, or could they be purely
21 system -- I guess I don't want to use the word
22 "actions" -- purely system --

23 A. Operations.

24 Q. Operations.

25 MR. SPANGLER: Objection, form.

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1 A. I think that some of the actions contemplated
2 here could be actions that are performed by parts of the
3 system itself.

4 Q. That if the sales process were entirely carried
5 out by a human, those things might never occur.

6 A. Oh, might never occur.

7 Q. Let me step back.

8 MR. SPANGLER: Objection, form.

9 Q. (By Mr. Dion) Maybe we could start at this a
10 slightly different way. So, one of the things that the
11 '525 Patent contemplates that a system could have is,
12 say, a task list, is that right?

13 MR. SPANGLER: Objection, form.

14 A. I'm sorry. Is what?

15 Q. A task list?

16 A. A task list? Okay.

17 Q. Do you agree that that's one of the things
18 discussed in the patent?

19 A. I don't recall that, specifically, but it's the
20 type of thing I would expect to be discussed.

21 Q. So if it weren't for the system, the
22 salesperson might have to -- if they didn't have any
23 computerized system, they might have to just keep that
24 task list on paper, and if they wanted a reminder, they
25 might have to just find a way to remind themselves.

11 (Pages 38 to 41)

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<p style="text-align: right;">Page 42</p> <p>1 MR. SPANGLER: Objection, form.</p> <p>2 A. True.</p> <p>3 Q. And do you view that process as part of the</p> <p>4 sales process?</p> <p>5 A. Yes.</p> <p>6 Q. So, if a salesperson has a list that says, for</p> <p>7 instance, every time a customer comes in, I want to send</p> <p>8 them a letter four days later to follow up with them?</p> <p>9 A. That sounds like an activity that I would</p> <p>10 include as part of the sales process, yes.</p> <p>11 Q. Now, is that something that the system of the</p> <p>12 '525 Patent could automate?</p> <p>13 MR. SPANGLER: Objection, form.</p> <p>14 A. Yes. The system that's named in the '525</p> <p>15 Patent, one of its functions or operations could be the</p> <p>16 maintenance of a task list, could even be the</p> <p>17 performance of some of the tasks on the task list, yes.</p> <p>18 Q. For instance, printing out the letter.</p> <p>19 A. Correct.</p> <p>20 MR. SPANGLER: Objection, form.</p> <p>21 Q. (By Mr. Dion) And I think we could view -- one</p> <p>22 way to view actions would be to view that it's those</p> <p>23 types of things that the salesperson used to do but the</p> <p>24 system is automating.</p> <p>25 MR. SPANGLER: Objection, form.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. You felt you were never at those margins.</p> <p>2 A. I don't believe so, no.</p> <p>3 Q. So, what would be required for a subsystem?</p> <p>4 And we'll get into subsystems a bit later. But what</p> <p>5 would be required for a subsystem to facilitate an</p> <p>6 action?</p> <p>7 A. Okay. Well, we talked about the -- one of the</p> <p>8 RT clients performing in the example that we did. And</p> <p>9 we talked about the fact that the -- when the RT server</p> <p>10 determined what offers, what opportunities to give to</p> <p>11 the complaining customer and transmitted that message</p> <p>12 back to the RT client, that that client then displayed</p> <p>13 all of those things onto the screen so that the call</p> <p>14 center operator could read them off to the customer,</p> <p>15 could negotiate with the customer.</p> <p>16 You use those as the basis for interacting</p> <p>17 with the customer. I would say that the display of</p> <p>18 those things facilitated the sales process. Similarly,</p> <p>19 for the RT client, at least, the other types of</p> <p>20 transactions, similar displays that are directing the --</p> <p>21 are directing the operator that are -- would be</p> <p>22 facilitating the sales process.</p> <p>23 Q. Okay. So, in that example, what is the action</p> <p>24 there?</p> <p>25 MR. SPANGLER: Objection, form.</p>
<p style="text-align: right;">Page 43</p> <p>1 A. I don't think that fully captures it. Again,</p> <p>2 I'm not sure, thinking about it quite in those terms,</p> <p>3 that every action that can be automated necessarily</p> <p>4 falls into that category, nor would I be comfortable in</p> <p>5 saying that only those actions that can be automated</p> <p>6 fall into that category.</p> <p>7 So, I'm -- I understand the</p> <p>8 characterization, and it's not unreasonable, I just</p> <p>9 don't think it fully characterizes what we're talking</p> <p>10 about.</p> <p>11 Q. No, that's fine, that's what I'm trying to</p> <p>12 understand. Like I said, that's one way you could</p> <p>13 characterize actions. Your view is that in these</p> <p>14 claims, it's not that limited, is that correct?</p> <p>15 A. It's not that characterization, correct.</p> <p>16 Q. Is there a characterization of actions that you</p> <p>17 applied, in your mind, when you were looking at these</p> <p>18 claims and comparing them to the accused systems?</p> <p>19 MR. SPANGLER: Objection, form.</p> <p>20 A. I don't think that I had to employ a fully</p> <p>21 comprehensive or exclusive definition of the term</p> <p>22 "actions," that I was pretty well within the boundaries</p> <p>23 of whatever it might be when I was doing the analysis I</p> <p>24 was doing. So, I didn't really run up against the need</p> <p>25 to define that precisely on any boundary.</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Displaying the results for the use of the</p> <p>2 operator.</p> <p>3 Q. Okay. So, the action is the system displaying</p> <p>4 the results to the operator.</p> <p>5 A. Right. If you think of the RT client as</p> <p>6 embedded in an application, for instance, rather than</p> <p>7 being the application that's doing the display itself,</p> <p>8 it would just simply be the transmission of that</p> <p>9 information for the purpose of displaying.</p> <p>10 Q. Okay. So if you wanted to focus purely within</p> <p>11 the boundaries of IA --</p> <p>12 A. Purely within the boundaries of IA, purely</p> <p>13 within the boundaries of an embedded client, then you</p> <p>14 could go down that far.</p> <p>15 Q. And then, if you view that way, the action is</p> <p>16 RT client sending the information to whatever other</p> <p>17 system it's embedded into so that that system can</p> <p>18 ultimately display it to the --</p> <p>19 A. Yes.</p> <p>20 MR. SPANGLER: Objection, form.</p> <p>21 Q. (By Mr. Dion) So, if, as I said in that</p> <p>22 example, the action is RT client transferring the</p> <p>23 information to the system it's embedded into, then RT</p> <p>24 client, at least, is carrying out that action, is that</p> <p>25 correct?</p>

12 (Pages 42 to 45)

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1 A. Right. I thought the question was asking me to
2 analyze it at that level. And at that level, that's a
3 way to characterize it, yes.

4 Q. If we characterize it that way, would you also
5 say that RT client was facilitating the action?

6 A. Well, hang on. Fair enough. The -- yes. Yes.
7 It both carries out the action and facilitates it at
8 that point. The -- I'm sorry, yes. That's the end of
9 it.

10 Q. Okay. So, the claim element also it calls out
11 plurality of subsystems.

12 A. Correct.

13 Q. Plurality means more than one?

14 A. Yes.

15 Q. What do you identify as the plurality of
16 subsystems within Interaction Adviser that meet this
17 claim element?

18 MR. SPANGLER: Objection, form.

19 A. Well, I identified several in the report. Just
20 quickly here, we identified each of the RT Client
21 subsystems as a subsystem. We identified the IA
22 Manager, the RT Administrator, RT Studio, I believe
23 the -- we identified at one point the data engine, at
24 least those. And then, of course, another construct, OM
25 and SS.

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1 Q. So, you're looking at -- I guess that's
2 primarily the top of page 16 of your report?

3 A. Yes.

4 Q. And we have there listed out RT Client, IA
5 Manager, RT Manager and RT Studio.

6 A. Yes.

7 Q. Is that right? And then, further down the next
8 paragraph it -- there's a cite from this Infor document,
9 322819 where it says that the E.piphany applications can
10 read from and write to multiple data sources.

11 A. Yes.

12 Q. So, is it your opinion that the data sources
13 that IA uses are also a subsystem?

14 A. Some of them can -- they can be subsystems of
15 this overall system, yes.

16 Q. Anything else?

17 A. That's what's in the report.

18 Q. Okay. And there's nothing else you're aware
19 of, beyond what's in the report?

20 A. It's fine as it is.

21 Q. Okay. You do state here, you say, "in
22 addition, IA is integrated with the Infor products OM
23 and S&S, which are, for the purposes of this Claim 1,
24 also subsystems." I guess -- I think you know what's
25 coming.

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1 A. Yes.

2 Q. Obviously, I understand you characterize them
3 as subsystems. That would only be true if IA were
4 integrated with those systems, is that correct?

5 MR. SPANGLER: Objection, form.

6 A. Correct.

7 Q. So, for purposes of this section of your
8 report, are you relying on those as possible subsystems
9 to support your opinion that IA infringes a stand-alone
10 product?

11 A. No.

12 Q. IA Manager and RT Manager, do you understand
13 those to be different?

14 A. I'm sorry. It should be RT Administrator.

15 Q. Okay.

16 A. I believe that's correct, yes. I had never
17 noticed that before.

18 Q. Okay. So, at the top of this list here, it
19 should read, RT Client, IA Manager, RT Manager?

20 A. RT Administrator.

21 Q. I'm sorry. RT Administrator and RT Studio.

22 A. Yes. I believe I corrected that later, or I
23 put it in correctly later.

24 Q. Okay. Well, I guess it turns out, as my
25 understanding, that Infor did use both the term IA

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1 Manager and RT Manager kind of through different
2 versions of its documentation. Is that your
3 understanding?

4 A. That's correct. And those would identify
5 actually the same product.

6 Q. Okay. So whether we call it IA Manager or RT
7 Manager, it's the same subsystem or the same part of IA,
8 just different nomenclature.

9 A. Correct.

10 Q. Okay. Also, when you were talking about the
11 possible subsystems, I believe you said that each of the
12 RT Clients --

13 A. Yes.

14 MR. SPANGLER: Objection, form.

15 Q. (By Mr. Dion) Did I hear that correctly?

16 A. Yes, I believe I did.

17 Q. What do you mean by "each of the RT Clients"?

18 A. Each of the RT Clients is independently and
19 separately a subsystem. So you have an RT Client that's
20 a Com client, and you have an RT Client that's a Java
21 client. You have an RT Client that's an MQ series
22 client. They're different things.

23 Q. And what is the purpose of each of those
24 different RT Clients?

25 A. They serve similar purposes. They're each set

13 (Pages 46 to 49)

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1 up to communicate to the RT server from whatever the
2 client is embedded in as a -- you know, the remote
3 system. Whether it's a call center or web page or an
4 ATM machine or a kiosk or something like that.

5 Q. So, is the particular RT Client that's used in
6 a certain implementation then determined by the system
7 it's being embedded into?

8 MR. SPANGLER: Objection, form.

9 A. I'm not sure if that's quite correct. It's
10 determined by the people who are building that system.
11 But the client component itself, each of them -- like I
12 said, each of them is what it is, and they are separate
13 things.

14 Q. In any particular implementation, would more
15 than one client be used?

16 A. In any particular implementation, would it be
17 used? Yeah, very possibly. If you have a client who
18 runs a call center and runs a web page, you might have
19 an MQ series running in the call center and http or Java
20 running for the web page.

21 And, similarly, if you go down to a smaller
22 system, like a kiosk or an ATM, you're more likely to
23 use C++. At least I would think so. That's not
24 necessary, but it's at least possible.

25 Q. If we look at say IA and each front end system

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1 that it's connected to, am I right that there would only
2 be one RT Client connected to any particular front end
3 system?

4 MR. SPANGLER: Objection, form.

5 A. Again, there's no requirement that that be
6 true, at least not that I'm aware of.

7 Q. Are you aware of an example where you would use
8 more than one RT Client, say, to hook into your call
9 center application?

10 A. What I'm aware of in that respect has to do
11 with the stipulation that I was presented with that
12 says, if it can do it, it does do it. So, that's the
13 way I did my analysis.

14 Q. Okay. I think we've covered this, but what's
15 your understanding of the functionality of RT Client?

16 A. Well, RT Client is the -- simply the
17 communications link between RT Server and the external
18 systems, whether they're, again, call center operations
19 or web pages or kiosks, ATMs, whatever.

20 Q. And these -- each of these subsystems also
21 needs to be coupled to the event manager, is that
22 correct?

23 A. Yes.

24 Q. What's your understanding of what that language
25 means, "coupled to the event manager"?

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1 MR. SPANGLER: Objection, form.

2 A. It means that it communicates with it, that it
3 interoperates with it, that it functions in conjunction
4 with it.

5 Q. Do you believe that "coupled to," as used in
6 this claim language, means the subsystems have to be
7 separate from the event manager?

8 A. As I understand it, the subsystems are a part
9 of the overall system, and they're identifiable as
10 separate -- in some respect, yes, whether they're
11 components of the event manager or associated with the
12 event manager, however you might express that, there's
13 some reason to treat them as separate, yes.

14 Q. So, it is your understanding, then, that
15 coupled requires them to be separate somehow?

16 MR. SPANGLER: Objection, form.

17 A. At least conceptually, yes.

18 Q. What's your understanding of IA Manager?

19 A. Just what I read in the documentation. IA
20 Manager is an application that is part of the IA system
21 and, as identified here, a subsystem of the IA system.

22 Q. How does IA Manager facilitate -- excuse me.
23 How is IA Manager configured to facilitate a phase of
24 the sales process?

25 A. The IA Manager is responsible for defining,

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1 editing, working with campaigns. Campaigns are an
2 essential part of the sales process. If you don't have
3 campaigns, you don't have offers, you don't have ability
4 to communicate the offers. It's the wellspring for the
5 sales process.

6 Q. The campaigns are.

7 A. Yeah.

8 Q. IA Manager doesn't develop the campaigns,
9 though, is that right?

10 A. Develop the campaigns?

11 MR. SPANGLER: Objection, form.

12 A. I'm not sure what you mean exactly by it, but
13 it's used to define the campaigns or to edit them.

14 Q. Where did the actual offer -- the terms of the
15 offer come from?

16 MR. SPANGLER: Objection, form.

17 A. Where do the actual terms of the offer come
18 from? I'm not sure if I can tell you where that is.

19 Q. Well, I guess maybe I'm not asking it right.
20 So, if we had somebody using IA, and they wanted to have
21 an offer available to be presented to their customers
22 and the offer was, you know, if you buy two, we'll give
23 you \$10 off and free shipping.

24 A. Yeah.

25 Q. Who decides that we should offer our customers

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<p style="text-align: right;">Page 54</p> <p>1 that if they buy two, they can get \$10 off and free 2 shipping?</p> <p>3 MR. SPANGLER: Objection, form.</p> <p>4 A. If I remember correctly, that goes with the 5 marketing folks. And they're actually users of the IA 6 Manager, but I don't know if the IA Manager is what they 7 use for that. I just don't recall that.</p> <p>8 Q. But it's going to be a person.</p> <p>9 A. It's going to be a person.</p> <p>10 Q. It's not IA Manager that decides, today we're 11 going to -- this is the deal that we're going to make 12 available. This is the pricing we're going to offer.</p> <p>13 A. In the way that you asked the question, I don't 14 think so, no.</p> <p>15 Q. I'm not trying to trick you.</p> <p>16 A. No, no. I understand.</p> <p>17 Q. I'm asking vague questions, I apologize.</p> <p>18 MR. SPANGLER: Let's try and not talk over 19 each other. She's starting to roll her eyes over there.</p> <p>20 A. Excuse me. I was just saying, as I understand 21 the question you asked, it seemed fairly 22 straightforward, and I think the answer is, no, that IA 23 Manager does not decide or make any policy decisions 24 about what people are going to do, no.</p> <p>25 Q. Okay. So the marketing manager or the</p>	<p style="text-align: right;">Page 56</p> <p>1 It's part of the preparation for the sales process, but 2 it's -- it's a necessary element. You can't do the 3 sales of the type that the IA product is intended for 4 unless you first have defined these campaigns.</p> <p>5 Q. Do you believe that IA Manager is separate from 6 what you've identified as the event manager, which is 7 the RT Server?</p> <p>8 A. I believe what I said was that RT Server is the 9 event manager part of the -- I'm sorry. You said IA 10 Manager. I was thinking IA. Is it separate from? 11 Well, it's certainly separable. So, yes.</p> <p>12 Q. What do you mean by "separable"?</p> <p>13 A. It's considered independently. It's an 14 application or component that is distinguished by the 15 fact that you have an installation process, you have a 16 separate log-on capability, you have a requirement to 17 coordinate the method of communication between the IA 18 Manager and the RT Server. So, yeah, I think it's 19 sufficiently separate.</p> <p>20 Q. Okay. Do you have an understanding of what the 21 installation process is for IA Manager?</p> <p>22 A. I read it at some point. There's -- there are 23 a couple of different manuals that either refer to it or 24 describe it, but I don't recall what it is.</p> <p>25 Q. How does a user interface with IA Manager?</p>
<p style="text-align: right;">Page 55</p> <p>1 marketing person, whoever it is says, today, this is one 2 of the offers we're going to make available. They sit 3 down at their computer and use IA Manager to put that 4 offer, put that campaign into the system, is that right?</p> <p>5 A. Okay.</p> <p>6 Q. Is that correct?</p> <p>7 A. Yes, I think that's right.</p> <p>8 Q. So, when I asked you about how IA Manager 9 facilitates a phase of the sales process, if I remember 10 correctly, your answer, in part, was that, you know, 11 it's used to develop campaigns -- or I don't know if 12 that was exactly your language -- and the campaigns are 13 the kind of core of the business.</p> <p>14 But I guess with the understanding that 15 obviously the campaigns originate the actual terms 16 outside of the system from a person, and that person 17 then inputs that offer into the system through IA 18 Manager, what is your understanding of how IA Manager is 19 facilitating a phase of the sales process?</p> <p>20 A. It's the means by which the offers are properly 21 recorded and entered into the system.</p> <p>22 Q. What phase of the sales process do you believe 23 it's configured to facilitate?</p> <p>24 MR. SPANGLER: Objection, form.</p> <p>25 A. This will be an early phase of the process.</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. SPANGLER: Objection, form.</p> <p>2 A. As I understand it, the IA Manager uses a web 3 browser as an interface.</p> <p>4 Q. So the end user would sit at their computer at 5 their desk and open up their web browser, and they can 6 then what, type in a URL?</p> <p>7 MR. SPANGLER: Objection, form.</p> <p>8 A. Or work off of an established link, yes.</p> <p>9 Q. Is there anything on their system other than 10 the web browser?</p> <p>11 MR. SPANGLER: Objection, form.</p> <p>12 A. I don't think so.</p> <p>13 Q. Is it -- does the IA Manager reside within the 14 RT Server in IA?</p> <p>15 MR. SPANGLER: Objection, form.</p> <p>16 A. I think the code bases are related, yes, 17 they're in the same area, yes.</p> <p>18 Q. I think in the rebuttal report, Mr. Kouznetsov 19 characterized it as IA Manager's implemented entirely 20 within the RT Server. Do you recall that?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Do you agree with that?</p> <p>23 A. I certainly don't agree with the conclusion 24 that he drew from it, but the "implemented entirely 25 within" I think is more an argument than a description.</p>

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1 My feeling about that is that -- my opinion about that
2 is that, as I said, there's a separate log-in process,
3 there is -- even though the installation may be simple,
4 there's still a separate installation requirement, that
5 communications set-up.

6 All of that indicates to me that it's a --
7 you know, that it's a separate system. Much of what you
8 do with IA Manager, you can also do with the RT
9 Administrator. Separate ways of getting to similar
10 parts of the information. I think that militates in the
11 view that, yeah, it's a separate piece.

12 Q. Could you install IA Manager on a computer
13 without installing RT Server?

14 A. I don't think so.

15 Q. If we look at, for example, RT Administrator,
16 though, you could in that case, is that right?

17 A. I don't recall. IA Manager, I do recall, and I
18 don't believe that's -- RT Administrator, I don't recall
19 the installation for that.

20 Q. But for IA Manager, you don't think it could be
21 installed without installing RT Server?

22 A. I don't think so, no.

23 Q. I think also when you were discussing why it
24 was your view that they were separate, you said because
25 you had to consider the method of communication between

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1 IA Manager and RT Server. I'm not a computer science
2 guy, so I'm probably butchering your words somewhat.

3 MR. SPANGLER: Objection, form.

4 A. Yes. There is an http protocol you have to set
5 up between the two systems.

6 Q. Between the IA Manager and the RT Server.

7 A. Correct.

8 Q. What's your understanding of the separate log-
9 on process that you talked about between IA Manager and
10 RT Server?

11 A. Just that you can have users who have an IA
12 Manager log-on that don't have -- that have restricted
13 access to the system, different from the -- for
14 instance, the RT Administrator log-on or the RT Studio
15 log-on or some of the others. It's separate.

16 Q. Is it a separate log-on, or is it just a matter
17 of giving different users different levels of
18 permission?

19 MR. SPANGLER: Objection, form.

20 A. As I recall, and this may be a little fuzzy,
21 but as I recall, in the system, they have the provision
22 for what they call a unified log-on, which would let, I
23 believe, a single user who has multiple authorizations,
24 let him log-on to all of his capabilities with one
25 operation.

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1 But there are also separations of a log-on.
2 So it's at least conceivable, as I read the
3 documentation, that you could have a user who has the
4 ability to use any of those -- any of those systems, and
5 he would have to log-on three different times; once for
6 IA Manager, once for RT Administrator, another time for
7 RT Studio. That's just -- that's the way it seemed to
8 work, when I read through the docs.

9 Q. So that person would have different
10 credentials, different user name and passwords for each
11 of those systems?

12 A. He could have different credentials that way.
13 I'm not sure -- I don't recall anything specific about
14 this, but my take on it, from the question, is that even
15 with essentially the same I.D. and password that if he
16 weren't set up with the unified log-on that he would
17 have to log into them separately. But certainly, as you
18 said, he could have a separate set of credentials for
19 each one of those systems.

20 Q. I'm jumping back a little, but could we talk a
21 little more about the http communication between IA
22 Manager and RT Server? And as I said, I'm not a
23 computer scientist, so is there a way you could kind of
24 explain that to me, hopefully not an inaccurate way but
25 maybe a less technical way?

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1 MR. SPANGLER: Objection, form.

2 A. I can give a simple explanation, which is that
3 you have two different sets of code that can operate,
4 and if they need to exchange information, there are any
5 number of ways that you can do that.

6 One way that gives you a great deal of
7 flexibility is using the same protocol that's used for
8 web operations, from a web browser to a web server,
9 which is the http connection. And in order to do that
10 between the systems, you have to know from one system to
11 the other what the correct http addressing mechanism is,
12 and so you have to set that up between them.

13 So, in order for the IA Manager to work
14 properly with the RT Server, you've got to get the RT
15 Server's domain, IP address.

16 Q. Okay. Thank you. But I think you said, to
17 begin this, it's essentially two different pieces of
18 code that need to communicate with each other?

19 A. Yes.

20 Q. Are there other ways to have two different
21 pieces of code communicate with each other?

22 A. Surely. You can have them joined together by
23 the fact that one can call the other. You can even have
24 it so that you can work calls both ways and either
25 communicate through global variables that they share,

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1 memory that they share or have one say, here, I want you
2 to do this work for me, and here are the parameters,
3 here is the data that I want you to work with and here
4 are the places where I want you to return the results.

5 Q. In the context of IA Manager and RT Studio, is
6 there a reason to have selected one of those over the
7 other, or is it just the programmer's option, or is
8 there some feature or functionality that using http
9 provides that, say, just allowing the processes to call
10 each other wouldn't provide?

11 MR. SPANGLER: Objection, form.

12 A. Well, there can be multiple reasons behind a
13 choice like that. One is that the people -- it's
14 developed by different people, and this is an easy way
15 or, again, a flexible way to hook these things together.
16 It could be that you want to use some of the features of
17 the http protocol to isolate one of the systems from the
18 other. I mean, there are any number of reasons.

19 It could be that that's the only protocol
20 that these particular programmers know. They can't
21 think of another way of doing it. So, lots of reasons
22 for doing it. Functional reasons would -- you would
23 think would have to do with the features of the http
24 protocol itself, but I don't know for sure why that was
25 done.

1 Q. What do you mean by "the features of the http
2 protocol itself"?

3 A. Well, one of the features of the http protocol,
4 for instance, it's called -- it's what's called a
5 stateless protocol. And that is, unless you do
6 something in particular to get around it, each http
7 request that arrives from a source to a destination is
8 entirely divorced from previous http requests. Okay?

9 It's simply, I asked you to do this, and
10 once that happens, once the return, if there's any
11 return occurs, once the end of that request is
12 accomplished, the receiver of the message is no longer
13 aware that the other guy ever existed. And so that's
14 one of the features of the http -- one of the most
15 characteristic features of the http protocol.

16 Q. Do you have an opinion as to whether that
17 particular feature is something that -- that would
18 suggest using that protocol in this particular
19 situation?

20 MR. SPANGLER: Objection, form.

21 A. No. As I mentioned, I have no idea why they
22 chose to do that.

23 Q. RT Administrator. What's your understanding of
24 what RT Administrator is?

25 A. RT Administrator functions somewhat like the IA

1 Manager does, in that it also works with editing
2 campaigns and working with the campaigns. I don't
3 recall at the moment what the distinguishing features
4 were, but like I say, it's used for similar functions.
5 I'm trying to recall if there's a distinction in the
6 user base, and I don't remember what it is.

7 Q. You said it's for campaigns?

8 A. I believe that you work with -- I believe
9 that's -- I believe that's correct, that you work with
10 campaigns with both the IA Manager and the RT
11 Administrator.

12 Q. Are you maybe thinking of RT Studio?

13 A. Well, certainly with the RT Studio, but I
14 thought the RT Administrator also addressed some of the
15 campaign work. I may just have gotten that confused at
16 this point.

17 Q. Well, because let me tell you what my
18 understanding is, and we can see if we can find a way to
19 agree. My understanding was that RT Administrator was
20 the system that was used to configure kind of the
21 technical details of IA, pointing it to data sources, I
22 guess configuring the connection between the RT Server
23 and RT Client or whatever other kind of --

24 A. Okay. Yes, that is a different group than the
25 IA Manager, but I was thinking that it wasn't just with

1 RT Studio that you had the distinction between the
2 technical users and the management users, but that on RT
3 Administrator that you actually had an overlap in those,
4 that you had some technical people, but you also had the
5 more functional, marketing people, as well.

6 And I may just be mis-remembering that
7 particular feature of it. But I thought that they had
8 something to do with managing the campaigns, as well. I
9 think I remember that. For administering the setup of
10 the interconnection between the RT Server and things
11 that RT Server has to deal with, out to the clients,
12 back to the data.

13 I don't recall whether you set the
14 communications with IA Manager from the RT -- because --
15 sorry. Now I'm losing a detail that I know that there
16 are two of those systems have to have an http link put
17 in, and I'm trying to remember if the RT Administrator
18 does, as well, and I don't recall.

19 Q. As I said to you earlier, this is by no means a
20 memory test, there's a lot of information there. So if
21 there is a document that either I've already given you
22 or something else that might help refresh your
23 recollection on this, I'd like to make sure we're
24 talking about the details correctly, because I think it
25 may be important. So, if there is something you can

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1 think of that would help you refresh your recollection,
2 I'd like to give you that opportunity.

3 A. I could try to go into it, but I think it might
4 take a while. Some of these things I have some
5 recollection about, roughly, where they are, page 3, I
6 can locate that. The information on this level of
7 detail, I don't -- I'm not sure where I would profitably
8 go look.

9 Q. I guess, as I'm sure you imagine the reason it
10 might become important is because I'm going to ask you,
11 how is it, in your view, that RT Administrator
12 facilitates a phase of the sales process? And I think
13 certainly whether or not it deals with campaigns is
14 going to be relevant to that answer.

15 A. Tell you what, I'll answer it without the
16 campaigns.

17 Q. Okay.

18 A. I'm sorry.

19 Q. No, no. Go -- if you think you can answer
20 it --

21 A. Does that put the question -- why don't you ask
22 me the question straightforward?

23 Q. Okay.

24 MR. SPANGLER: I think, to the extent it is
25 in the report, as long as it's not abusive, if he can't

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1 find it, you know, relatively quickly, then we move on.
2 But I think you're right, we need an accurate record.

3 MR. DION: I'm more than willing to let him
4 look.

5 THE WITNESS: All right. Let me just take
6 a few minutes.

7 MR. SPANGLER: I don't want you to use your
8 time, but let him look for a little bit and see, and if
9 he can't find it, then go on. But it doesn't make it
10 accurate for either one of us.

11 THE WITNESS: Let me look here, first, then
12 I'll do a little bit of looking here, but I won't take
13 much of your time.

14 (MR. ZAHER RE-ENTERS ROOM.)

15 Q. (By Mr. Dion) Were you able to find it?

16 A. I found something that works here, yes.

17 Q. Okay. Would you mind just identifying what
18 page that is that you're looking at?

19 A. 16 of Exhibit 3.

20 Q. So, has that helped kind of refresh your
21 understanding of --

22 A. Yes.

23 Q. So, let me ask you the question again, then.

24 What is it that you understand RT Administrator to do?

25 A. Well, I haven't done that. I improperly put it

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1 away. As you described earlier, the RT Administrator is
2 used to set up the communications between the real-time
3 server and other elements, such as the IA Administrator,
4 the -- I'm sorry -- the IA Manager, the RT Studio, the
5 RT Client.

6 Q. Okay.

7 A. And the data sources.

8 Q. Okay. But it doesn't deal with campaigns,
9 then.

10 A. Doesn't deal with campaigns, correct.

11 Q. So, in your opinion, how is RT Administrator
12 configured to facilitate a phase of the sales process?

13 A. Again, the operation of the system, the whole
14 IA system is dependent on the operations of the
15 subsystems that are part of it. If you don't hook them
16 together, they don't talk to each other. If they don't
17 talk to each other, you can't get the interaction
18 between them that you need. You can't get the smooth
19 flow of data back and forth.

20 And the RT Administrator is a necessary
21 element of making that system function as a system,
22 which is a segment apart and during the sales process.

23 Q. But if we went back to our real world example
24 we talked about earlier, our sales company and they have
25 a building and salespeople sitting there. If nobody

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1 came in and built the building, those salespeople
2 couldn't be sitting there talking on the phones, trying
3 to sell product.

4 MR. SPANGLER: Objection, form.

5 A. Yes, that's true.

6 Q. So, construction guys that built the building,
7 were they facilitating a phase of the sales process?

8 A. No.

9 Q. Do you view that as different?

10 A. I view this as different.

11 Q. Why?

12 A. I view this as not building the building, but
13 perhaps more nearly the choice of which communication
14 system you put in place. You can run runners back and
15 forth between the offices, or you can have an intercom.
16 You can have a telephone. You can have a computer
17 system.

18 And at the level that this is operating,
19 it's an essential -- it's an essential part of making
20 this system go. In the example that you gave about
21 buildings, some building is necessary, but any
22 particular one is not.

23 In this case, you have something that is
24 essential to the operation of the system. Without doing
25 what this does, this particular thing does, you don't

18 (Pages 66 to 69)

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<p style="text-align: right;">Page 70</p> <p>1 have a substitute for the RT Administrator. If you 2 don't have that function there, the system doesn't go. 3 Q. But the function is to set up the system so it 4 can do the other things that it's designed to do, is 5 that -- 6 MR. SPANGLER: Objection, form. 7 A. That's one of the functions of the system. It 8 sets up the communications. I don't recall from this if 9 there is -- what the ongoing need for the RT 10 Administrator is. Right. It's essential for the 11 infrastructure for that -- for the application, for the 12 system that we're talking about. 13 Q. And I want to kind of back up a little, and 14 this is somewhat my fault, but the actual language of 15 the claims is that there's a plurality of subsystems 16 configured to facilitate one or more actions performed 17 during at least one phase of the sales process. 18 A. Right. 19 Q. What action is RT Administrator facilitating? 20 A. It facilitates the communication between the 21 subsystems, among and between the subsystems. 22 Q. Okay. By configuring it. 23 A. By making it possible. You remember one of the 24 definitions I gave of facilitating was that not only did 25 it makes something easier, but in some circumstances</p>	<p style="text-align: right;">Page 72</p> <p>1 there is similar, as far as accessing RT Administrator? 2 It's a web interface on the user's computer? 3 MR. SPANGLER: Objection, form. 4 A. I'm not sure if I remembered that. What I did 5 remember was what you asked earlier about, can you run 6 RT Administrator without having RT server running? And 7 the answer would be no. 8 Q. Okay. 9 A. But I believe it's very closely analogous to IA 10 Manager. 11 Q. RT Studio. Do you have an understanding of 12 what RT Studio is? 13 A. Some, yes. 14 Q. And I think on page 17 of Exhibit 3, I don't 15 know if you've looked at that yet or not, but might 16 help. 17 A. Okay. Just a moment here. 18 Q. Sure. 19 A. Right. 20 Q. So, what's your understanding of what RT Studio 21 is? 22 A. Well, RT Studio, this says "managing packages," 23 which is part of or involved with the campaigns. And 24 there are -- part of what the -- part of what you build 25 in order to make these campaigns function is what you</p>
<p style="text-align: right;">Page 71</p> <p>1 made it possible. This is necessary to make it 2 possible. 3 Q. Did RT Administrator do that in any kind of 4 ongoing way, or is that something you just do once and 5 then the system -- 6 MR. SPANGLER: Objection, form. 7 A. Conceivably, you could do it once, but from 8 that one occurrence, you're facilitating the actions 9 that take place later. 10 Q. I understand, obviously, if you chose to, you 11 could go in and make changes. 12 A. Yes. 13 Q. But using RT Administrator is not, say, a daily 14 or weekly or kind of ongoing obligation of running IA. 15 A. As I understood your question, it was given 16 that it is used once and perhaps never used again, is it 17 still facilitating the sales process? And my answer 18 would be, yes. 19 Q. Okay. And similar question that we talked 20 about IA Manager, is it your opinion that RT 21 Administrator is separate from the RT Server that you 22 have identified as the event manager? 23 A. Yes, in much the same sense that I did for IA 24 Manager. 25 Q. Is it your understanding that the functionality</p>	<p style="text-align: right;">Page 73</p> <p>1 might think of as application level or manager level 2 type information. These are things that marketing 3 professionals do. 4 Some of the specifications that you have 5 for this have to be done by people who were trained as 6 IT type professionals. The RT Studio serves as the 7 interface for that second group, the IT types. Now, 8 again, it doesn't mean that you can't have somebody 9 crossing the boundaries there, working on both sides of 10 this, but it gives you the chance to do those types of 11 tasks that are behind all this that are required to -- 12 that require more technical expertise. 13 Q. Is it your opinion that RT Studio facilitates 14 one or more actions performed during at least one phase 15 of the sales process? 16 A. Yes. 17 Q. What actions do you think it facilitates? 18 A. Again, virtually all the actions that take 19 place off of the -- off of the campaigns, that this is a 20 necessary operation for getting your campaigns properly 21 set up, properly defined, properly installed, ready to 22 go. 23 Q. Are there any subsystems of IA that you 24 identified that you don't think facilitate the sales 25 process?</p>

19 (Pages 70 to 73)

Page 74	Page 76
<p>1 MR. SPANGLER: Objection, form.</p> <p>2 A. Any that I identified?</p> <p>3 Q. Or any that you're aware of?</p> <p>4 A. I don't know of any. I would -- I can't think</p> <p>5 of any at the moment.</p> <p>6 Q. I mean, you know, we've talked about each of</p> <p>7 these, and I think you said all of them perform some</p> <p>8 critical role to the system. My guess is that all the</p> <p>9 components of IA are performing some important role to</p> <p>10 the system, and that if you removed any one component,</p> <p>11 the system wouldn't function.</p> <p>12 A. I don't know that that's true. So, I can't --</p> <p>13 I can't say. I don't know.</p> <p>14 Q. The system is designed to be a sales system,</p> <p>15 right?</p> <p>16 A. I believe it is, yes.</p> <p>17 Q. And so the subsystems -- each of the subsystems</p> <p>18 that are a part of it, I guess, have the same role kind</p> <p>19 of, along the lines of what we discussed about IA</p> <p>20 Manager and RT Administrator and RT Studio, which is</p> <p>21 that if you don't -- if the system doesn't have that</p> <p>22 functionality, then it can't function kind of in a big</p> <p>23 sense as a sales system, is that right?</p> <p>24 MR. SPANGLER: Objection, form.</p> <p>25 A. I don't know that that's true. Just as a for</p>	<p>1 have a subsystem within your system that's unrelated to</p> <p>2 the sales process.</p> <p>3 (MR. ZAHER LEAVES ROOM.)</p> <p>4 Q. (By Mr. Dion) What would that look like?</p> <p>5 A. I'm not sure. I didn't look at the system that</p> <p>6 way. I don't recall seeing anything like that. But, I</p> <p>7 mean, you asked the question, are all conceivable</p> <p>8 subsystems necessary? And my answer, I think, is no.</p> <p>9 Q. Can you think of an example of a subsystem</p> <p>10 within a sales system that wouldn't facilitate one or</p> <p>11 more phases of the sales process?</p> <p>12 A. I can come up with something probably</p> <p>13 facetious, just off the top, but I'm not sure that --</p> <p>14 well, okay, let's try something. You sell a component</p> <p>15 that is a game, that lets the users of IA play Solitary.</p> <p>16 Like I said, yes, there are limits, and</p> <p>17 just exactly what those limits are, I don't know. I</p> <p>18 just looked at the stuff that I had available to me.</p> <p>19 Q. When you looked at the system -- I guess the</p> <p>20 systems that are described in the specifications of the</p> <p>21 '525 Patent, did you see anywhere in there subsystems</p> <p>22 that, in your view, weren't configured to facilitate a</p> <p>23 phase of the sales process?</p> <p>24 A. I don't think I looked for any like that. I</p> <p>25 don't recall.</p>
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<p>1 instance, you could eliminate any one of the RT Clients</p> <p>2 and everything else works. You might not be able to</p> <p>3 work on IBM MQ series systems, but you could still run</p> <p>4 the rest of the system.</p> <p>5 I don't know for sure, but it's at least</p> <p>6 conceivable that you could -- I'm not quite sure if this</p> <p>7 works, but it's at least conceivable that you could work</p> <p>8 with RT Studio without IA Manager. I'm not sure about</p> <p>9 that. But there is a great deal of overlap there.</p> <p>10 Q. I guess, you know, the system or the -- excuse</p> <p>11 me -- the claim, Claim 1, the preamble says that it's a</p> <p>12 sales system, and then this first element further</p> <p>13 specifies a plurality of subsystems.</p> <p>14 A. Correct.</p> <p>15 Q. And then it says that that plurality of</p> <p>16 subsystems have to be configured to facilitate one or</p> <p>17 more actions performed during at least one phase of the</p> <p>18 sales process. I guess what I'm trying to understand</p> <p>19 is, in your view, does that second clause, "configured</p> <p>20 to facilitate one or more actions performed during at</p> <p>21 least one phase of the sales process," does that really</p> <p>22 limit the claim anything more than just requiring a</p> <p>23 plurality of subsystems, in your view?</p> <p>24 MR. SPANGLER: Objection, form.</p> <p>25 A. Well, it's at least possible that you could</p>	<p>1 Q. So, I think we've talked about the RT Clients.</p> <p>2 Let me go back to that. You said today that you think</p> <p>3 the multiple RT Clients, you view each one of them as a</p> <p>4 separate subsystem --</p> <p>5 A. Correct.</p> <p>6 Q. -- to IA. Does it say that in your report</p> <p>7 somewhere?</p> <p>8 A. I believe it does, yes. Identified in Footnote</p> <p>9 7 that the clients are -- you know, where they're</p> <p>10 located.</p> <p>11 Q. Does it state there, in your view, that the</p> <p>12 existence of multiple clients creates multiple</p> <p>13 subsystems?</p> <p>14 A. I think so. But we also reference, again --</p> <p>15 here, let me just pull this up. Exhibit 3, page 2.</p> <p>16 Those clients are identified as independent, separate</p> <p>17 items. You have a com client, an http client, a socket</p> <p>18 client, Java client, MQ series client. I think it's</p> <p>19 clear that those are different gizmos.</p> <p>20 Q. Does it say in here that your view is that each</p> <p>21 one of those different RT Clients is a separate</p> <p>22 subsystem for the purposes of satisfying the plurality</p> <p>23 of subsystems limitation?</p> <p>24 A. I believe so, yes.</p> <p>25 Q. Where does it say that?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. I appeal to the exhibit and also to the 2 footnote there. I believe I separately mention, at 3 least looking at the footnote, the Java client and the 4 http client, the -- I think the designation generally 5 located at the DM client area refers to the 6 separateness, but yes, I believe that's there. 7 Q. Okay. So we talked about the RT Clients. We 8 talked about the IA Manager, RT Administrator and RT 9 Studio. And I think we've agreed that, at least for 10 purposes of this section of your report, OM and S&S are 11 not relevant. Then the other thing identified here is 12 multiple data sources as potentially a subsystem, is 13 that right? 14 A. Yes. 15 Q. Does IA always have multiple data sources? 16 A. I don't know. I know that IA has its own RTDB, 17 and it refers to the -- it's referring to multiple data 18 sources in the documentation. Whether those data 19 sources, multiple data sources are always necessary, I 20 don't know. 21 Q. Does it always have at least one data source? 22 A. I believe it always operates out of the RTDB, 23 at the very least, yes. 24 Q. And what is the RTDB? 25 A. Real-time database contains -- well, again, let</p>	<p style="text-align: right;">Page 80</p> <p>1 I'm sure, numerous different structures. Does the RTDB 2 work differently than other databases, that you're aware 3 of? 4 A. If I understand correctly, I think the answer 5 to that is no. The RTDB is a database. And both the 6 accesses to get information out of it and to put 7 information into it are more or less the types of 8 accesses that one would make with any other database. 9 Q. Is this table here, is that a list of the types 10 of information that could be stored on RTDB? 11 MR. SPANGLER: Objection, form. 12 A. Grossly, because it's a list of tables, not 13 necessarily of the detailed fields or individual data 14 items in each table, but it's a list of tables. 15 Q. Okay. So, within those tables, there would be 16 individual data fields? 17 A. Yes. 18 Q. Is it your opinion that the RTDB is configured 19 to facilitate actions occurring during a phase of the 20 sales process? 21 A. Certainly. 22 Q. And what's the basis for that opinion? 23 A. Again, without this information, you don't have 24 an -- you don't have a functioning system. It's 25 facilitated -- it facilitates, probably as much as any</p>
<p style="text-align: right;">Page 79</p> <p>1 me go back and look here because -- 2 Q. Please. 3 A. There are distinctions between. 4 MR. SPANGLER: Joel, while he's doing that, 5 you want to come up with a plan for -- make sure you 6 guys have time for your seven hours? I mean, I'm 7 flexible, I just want to make sure. 8 MR. DION: Are you -- 9 A. Whenever you're ready. 10 MR. SPANGLER: I'm ready when you are. I 11 just wondered -- sure. 12 A. Okay. Page 7 of Exhibit 3. 13 Q. Thank you. Okay. 14 A. This talks about the tables in the RTDB, and 15 has an extensive list of what's there. 16 Q. But it's a database? 17 A. Yes. 18 Q. Obviously, every different database has 19 whatever structures the programmers have given it, but 20 is it fundamentally different than any other database? 21 MR. SPANGLER: Objection, form. 22 A. I'm not sure what you mean by "fundamentally 23 different." 24 Q. I guess every -- as I said, every database kind 25 of has its unique structure. You could give databases,</p>	<p style="text-align: right;">Page 81</p> <p>1 part of the system, almost every phase of the sale 2 process. 3 Q. Would it be possible to set up IA, and rather 4 than using RTDB, use some other database? 5 MR. SPANGLER: Objection, form. 6 A. I'm not sure what you mean. Some other 7 database with all the same information in it? Because 8 the way that IA works is, it works off of processes that 9 expect certain types of information, and without that 10 information, the processes stop. 11 So, I'm not sure what you mean by "another 12 database." Could it be implemented with Oracle or 13 Sequel server or DB2 or some other? Yes. But with 14 regards to the information here, to the extent you 15 change the information, you change the operation of IA. 16 At some point, it loses its nature, but I -- 17 Q. And that was my question. So you could point 18 IA, instead of to the RTDB, you could point it to a 19 Sequel server? 20 A. I don't recall whether the RTDB is implemented 21 using the Sequel server; that is, does it use its own -- 22 does it use the Sequel server as the background database 23 in which the stuff is structured and stored? I don't 24 remember. It's the -- it's the data. It's the 25 information that's in it that we're talking about. At</p>

21 (Pages 78 to 81)

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1 least I think that's what we're talking about.
 2 Q. Okay. So the language here that refers to --
 3 it says "E.piphany applications can read from and write
 4 to multiple data sources." Do you have an understanding
 5 of what is meant by "multiple data sources"?
 6 A. The -- where are you?
 7 Q. I'm sorry. I was looking at your report, page
 8 16. At the top, it's that quote. You quoted that from
 9 a document.
 10 A. I'd have to go back to it and see. In the
 11 context here -- I believe, in the context here, it
 12 refers to sources of data outside the RTDB.
 13 Q. It talks about, it's possible to create
 14 connections to external data sources?
 15 A. Yes.
 16 MR. SPANGLER: Objection, form.
 17 Q. (By Mr. Dion) Do you understand that to mean
 18 external to IA?
 19 MR. SPANGLER: Objection, form.
 20 A. Yes.
 21 Q. Is RTDB internal to IA?
 22 A. Yes.
 23 MR. SPANGLER: Objection, form. Please
 24 give me at least one second to get the objection on the
 25 record.

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1 THE WITNESS: Sorry.
 2 MR. DION: Do you want to just stipulate
 3 that you object to every question I ask?
 4 MR. SPANGLER: I've let a lot go, but you
 5 can't do running objections in East Texas, so no.
 6 Q. (By Mr. Dion) If, in addition to RTDB, you
 7 pointed IA to one of these external data sources, in
 8 your opinion, would that be another subsystem?
 9 MR. SPANGLER: Objection, form.
 10 A. I believe it could be, yes.
 11 Q. You say it could be. Why do you qualify it
 12 that way?
 13 A. I believe it's possible that some of the
 14 external data sources could be treated as outside the
 15 system that we're talking about, whereas others, under
 16 the right circumstances, would be considered inside the
 17 system.
 18 Q. Okay. If we assume that they're properly
 19 treated as part of the system or inside the system,
 20 would they then be, in your view, an additional
 21 subsystem?
 22 A. Not just as a block of data, but as the system
 23 that's used to access the data, access, read and write
 24 to it. So, for the RTDB, you have the data engine as a
 25 subsystem. For any of these others, it would be

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1 whatever you wrote to function with that. I think
 2 that's correct. I think that's including the data, but
 3 that the system wouldn't be just the corpus of data, it
 4 would include the accesses to and from.
 5 (MR. ZAHER RE-ENTERS ROOM.)
 6 Q. (By Mr. Dion) So, I guess stepping back, when
 7 you say that the RTDB could be one of the subsystems,
 8 does that mean the RTDB in conjunction with the data
 9 engine?
 10 A. I believe that's correct, yes.
 11 Q. Where is the data engine?
 12 A. Where is the data engine?
 13 Q. Where does it reside within the system?
 14 A. I'm not sure what you mean. You talking about,
 15 where is the executing program?
 16 Q. Yeah. What do you mean by "data engine"?
 17 A. It's the subsystem that's -- that treats with
 18 accesses to and from the RTDB.
 19 Q. So, the data engine part of RT Server?
 20 MR. SPANGLER: Objection, form.
 21 A. In much the same sense, I suppose, that the IA
 22 Manager would be part of the RT Server. I'm not sure --
 23 actually, I'm not sure. I don't know. The data engine
 24 may operate on its own without the RT Server running. I
 25 don't know that.

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1 Q. But when we talk about, as I said, the RTDB as
 2 a subsystem, we mean the RTDB in conjunction with the
 3 data engine?
 4 A. In conjunction with the software that's
 5 necessary to communicate with it, yes.
 6 Q. And I think, as you said, the same would be
 7 true for any other data source?
 8 A. Correct.
 9 Q. And would it also be your opinion that if IA
 10 was connected to other external data sources, and we
 11 treat them as subsystems, that they would also be
 12 configured to facilitate an action during the sales
 13 process?
 14 MR. SPANGLER: Objection, form.
 15 A. Again, not necessarily, but yes, they could be.
 16 Q. Why do you say "not necessarily"?
 17 A. For the same reason that I said that you could
 18 have subsystems that didn't serve. So, if you have a
 19 database that records all these Solitaire games that
 20 people play, I doubt that it would be facilitating a
 21 sale.
 22 Q. And just to confirm, Element A-2, which is an
 23 event manager coupled to the subsystems, when you looked
 24 at IA, your opinion is that RT Server is the event
 25 manager?

22 (Pages 82 to 85)

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1 A. Yes.
 2 Q. And I think we touched on this earlier, but
 3 that "coupled to the subsystems" language, what do you
 4 understand that to mean, "coupled to"?
 5 A. Generally, in communications with or operating
 6 in conjunction with.
 7 Q. Did you review the Court's memorandum on claim
 8 construction in this case?
 9 A. Yes, I did.
 10 Q. Do you recall if there was language in there
 11 about that term "coupled to"?
 12 A. I don't recall the specific language, no.
 13 MR. DION: Andrew, I apologize, we're one
 14 short on this.
 15 MR. SPANGLER: You know what? You're in
 16 luck, because I've got it right here.
 17 MR. DION: I have one for him, I just --
 18 MR. SPANGLER: No, I have mine right here.
 19 (DEPOSITION EXHIBIT 2 MARKED.)
 20 Q. (By Mr. Dion) I'm going to hand you a document
 21 that's been marked as Exhibit No. 2. Have you seen that
 22 document before?
 23 A. Yes.
 24 Q. And what is that document?
 25 A. It's the Memorandum Opinion Markman Ruling.

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1 Q. And you've read that before --
 2 A. Oh, yes.
 3 Q. -- in connection with this case? If I could
 4 have you turn to page 8. Do you see the paragraph
 5 starting "both sides' definitions"?
 6 A. Yes.
 7 Q. And then the third sentence, "the term coupled
 8 to"?
 9 A. Right.
 10 Q. And it says, "the term coupled to necessarily
 11 implies that the event manager is separate from the
 12 various subsystems."
 13 A. Right.
 14 Q. What do you understand that to mean?
 15 A. Just that it's distinguishable, that the
 16 subsystem has an operation that is separate from the
 17 operation of the event manager.
 18 Q. So, when you were looking at the Infor product
 19 to determine whether they met the limitations, were you
 20 looking to see whether or not the subsystems you
 21 identified were separate from the event manager?
 22 A. Well, again, I don't think that we have the
 23 same notion of what the "separate from" means. What I
 24 look for was whether they have a separate operation,
 25 whether they have a separate function, a separable

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1 function. And, yes, that's what I took this to mean.
 2 Q. Whether or not there was a separately definable
 3 function?
 4 MR. SPANGLER: Objection, form.
 5 A. Correct. Well, more or less. Again, I
 6 identified systems that we disagree as to whether
 7 they're coupled to. But, in my view, the degree of
 8 separation shown and the treatment of them as separate
 9 applications and -- or separate components or -- and
 10 then the other indicia, like, you know, log-ons, and so
 11 forth. So that, to my mind, is separation of the event
 12 manager from the RT Server, yes.
 13 Q. Is separable the same as separate, in your
 14 view?
 15 A. When it operates separately, yes.
 16 Q. I don't know if I understand what you mean
 17 exactly by that. Could you explain that a little bit?
 18 A. Well, like I said, the -- going back to the --
 19 you look at RT Studio, RT Administrator, IA Manager,
 20 look at any of those three things, they have a separate
 21 log-in, they have a separate user base, they have
 22 separate help systems, they are identified as
 23 applications, they are -- they operate separately from
 24 the event manager function of RT Server. I believe
 25 they're separate, yes.

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1 Q. Okay. You may be right that we have a
 2 different understanding of what "separate" means, but I
 3 guess --
 4 A. I understand that we may, yes.
 5 Q. But based on your understanding of the term
 6 "separate," you examined IA to determine whether or not
 7 these subsystems were separate, is that correct?
 8 A. Yes, I believe I did.
 9 Q. Okay. And it's your view that each of those
 10 systems you identified is separate from the RT Server.
 11 A. Separate from the event manager, yes.
 12 Q. Is there a distinction there?
 13 A. There's some distinction, yes, because the RT
 14 Server has multiple functions in it, so yeah.
 15 Q. So, your report says that --
 16 A. The RT Server is the event manager, yes.
 17 Q. Okay. So, I asked the question, is it your
 18 opinion that those subsystems are separate from the RT
 19 Server? And your response is they're separate from the
 20 event manager.
 21 A. Fair enough. The distinction is that to the
 22 extent that you describe these as being part of or
 23 dependent on the RT Server, even if you consider them as
 24 somehow part of the RT Server, they're nevertheless
 25 subsystems of the RT Server, and they're separate from

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 the RT Server.</p> <p>2 So, am I saying that the IA Manager is the</p> <p>3 event manager? Then the answer is no. Even if you</p> <p>4 consider it part of the RT Server, it's not.</p> <p>5 Q. Do you not consider it part of the RT Server?</p> <p>6 A. Actually, no, I don't. But even if you do, I</p> <p>7 don't think it's part of the -- I don't think it's the</p> <p>8 event --</p> <p>9 Q. Why don't -- I think we're talking about IA</p> <p>10 Manager, specifically, here.</p> <p>11 A. Correct.</p> <p>12 Q. Why do you not consider that part of the RT</p> <p>13 Server?</p> <p>14 A. Hang on. I consider it separate from the RT</p> <p>15 Server, for the reasons that I've stated, okay?</p> <p>16 Q. Okay.</p> <p>17 A. And that's just the way that I see it. The</p> <p>18 designation as an application, the characterization as a</p> <p>19 component, all the other things that I've talked about.</p> <p>20 So, the -- now, I've kind of lost the thread of what we</p> <p>21 were talking about here.</p> <p>22 Q. Let's see if we can get back there.</p> <p>23 A. Okay.</p> <p>24 Q. I understand it's your opinion that the IA</p> <p>25 manager, for instance, is separate from the RT Server.</p>	<p style="text-align: right;">Page 92</p> <p>1 functionality.</p> <p>2 A. Right.</p> <p>3 Q. As some notion of functionality relating</p> <p>4 somehow to separateness.</p> <p>5 A. Okay.</p> <p>6 Q. Do you think that the Court's suggestion or the</p> <p>7 Court's statement that "coupled to necessarily implies</p> <p>8 that the event manager is separate from the various</p> <p>9 subsystems," is there anything structural to that</p> <p>10 statement, in your view?</p> <p>11 MR. SPANGLER: Objection, form.</p> <p>12 A. Do you mean in the sense that the source code</p> <p>13 for the two separate parts have to be in different files</p> <p>14 or in different directories or compiled by different</p> <p>15 compilers or --</p> <p>16 Q. That could be one way. I think that would</p> <p>17 satisfy what I'm saying. I don't know that what I'm</p> <p>18 saying is necessarily limited to that. For instance, I</p> <p>19 think you said earlier that your understanding is that</p> <p>20 you couldn't operate IA manager without RT Server.</p> <p>21 A. I believe that IA manager won't operate in the</p> <p>22 absence of RT Server.</p> <p>23 Q. So, at some level in the code, there must be</p> <p>24 some overlap there that creates that scenario, I guess.</p> <p>25 Again, I'm not a computer scientist.</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Fair enough.</p> <p>2 Q. You, at some point during one of your answers,</p> <p>3 said that even if you view IA Manager as part of the RT</p> <p>4 Server, it's still your opinion that they're separate,</p> <p>5 is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. So, then, my question to you is: Do you view</p> <p>8 IA Manager as part of the RT Server?</p> <p>9 A. No, I don't.</p> <p>10 Q. Okay. Is that because you believe it to be</p> <p>11 separate from the RT Server?</p> <p>12 A. No. I understand the reason for going through</p> <p>13 this. It's just that the -- just applying the --</p> <p>14 applying the construction of the Court, "coupled to," he</p> <p>15 says, necessarily implies that it's separate. And in</p> <p>16 that respect, it is separate. Okay? That's all that</p> <p>17 I -- all that I meant to say. The -- I believe it is</p> <p>18 coupled to. I believe it is separate.</p> <p>19 But I think that the impression that I get</p> <p>20 is that you're using part of in a way that doesn't apply</p> <p>21 to this, and that I think is where the struggle is.</p> <p>22 Q. You very well could be right. Let me ask you</p> <p>23 this, and see if this is more or maybe less helpful.</p> <p>24 A. Okay.</p> <p>25 Q. You've talked at least to some degree about</p>	<p style="text-align: right;">Page 93</p> <p>1 MR. SPANGLER: Objection, form.</p> <p>2 A. Let me try this, that there is an operational</p> <p>3 dependency between these things is manifest; that is, IA</p> <p>4 Manager doesn't make sense without the RT Server</p> <p>5 operating. The fact of the dependency doesn't mean that</p> <p>6 it's a part of it. That, I think, is where the</p> <p>7 distinction may -- that may be a reasonably good</p> <p>8 characterization of the distinction in our views.</p> <p>9 Q. Okay. I think this is a good time for a break.</p> <p>10 A. Okay.</p> <p>11 VIDEOGRAPHER: The time is 11:52, we're off</p> <p>12 the record.</p> <p>13 (OFF THE RECORD FROM 11:52 A.M. TO 12:39 P.M.)</p> <p>14 VIDEOGRAPHER: The time is 12:39, we're</p> <p>15 back on the record.</p> <p>16 (MR. ZAHER AND MR. GEORGE ARE NOT PRESENT.)</p> <p>17 Q. (By Mr. Dion) Looking at page 16 of your</p> <p>18 report, under the heading "Claim 1, element a2 -</p> <p>19 construction."</p> <p>20 A. Yes.</p> <p>21 Q. It says there, the last sentence, that other</p> <p>22 than the terms event manager and subsystem, your</p> <p>23 analysis construed the other terms in accordance with</p> <p>24 their ordinary and customary meaning to one of skill in</p> <p>25 the art. Do you see where it says that?</p>

24 (Pages 90 to 93)

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1 A. Yes.
 2 Q. We were talking a little bit before the lunch
 3 break about the term "coupled," and as a corollary to
 4 that, the language in the Court's order about
 5 "separate".
 6 A. Yes.
 7 Q. Is it your view that "coupled," as -- its
 8 ordinary and customary meaning to one skilled in the
 9 art, is that the same as what the Judge had to say about
 10 "coupled"?
 11 MR. SPANGLER: Objection, form.
 12 A. What the Judge said was that "coupled to"
 13 includes the notion of separate. Isn't that correct?
 14 Q. It's on page 8.
 15 A. No. The term "coupled to" necessarily implies
 16 that the event manager is separate from the various
 17 subsystems. That's -- I realize it's not claim
 18 construction of another term, but I used that as the
 19 guide for the way I applied it.
 20 Q. That's what I was looking for, just to
 21 understand the language here, it's unclear, and just to
 22 confirm --
 23 A. Fair enough. I understand what you're asking,
 24 now, yes.
 25 Q. And so what you applied in your analysis --

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1 A. Yes.
 2 Q. -- was that language.
 3 A. Yes.
 4 Q. You viewed that as the Court -- I don't want to
 5 say construing -- but explaining that term.
 6 A. Not construing, but it didn't seem to be
 7 worthwhile to try to press that particular issue in any
 8 way.
 9 Q. Okay. The top of page 17, when you're talking
 10 about the RT Server, you mention -- you say, "examples
 11 of engines which are within the RT Server include the
 12 Mdap engine." Why is the discussion of engines raised
 13 here in this section of the report?
 14 A. I was just trying to give some feel for how
 15 the -- how the server is made up.
 16 Q. What are engines?
 17 A. What are engines?
 18 Q. Yes.
 19 A. An engine can be almost anything. In this
 20 circumstance, the engines identified are the Mdap
 21 engine. I thought I identified more than just the Mdap
 22 engine. Oh, there's a reference to the DmEngines,
 23 generally. I just thought it was worth recognizing that
 24 the -- even -- that the RT Server is not just a block,
 25 okay? It's made up of parts.

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1 Q. Okay. And in Footnote 11, which is referenced
 2 from the section on engines, you mention in there a data
 3 access engine.
 4 A. Yes.
 5 Q. A few minutes ago, we were talking about the
 6 RTDB and --
 7 A. Yes.
 8 Q. We talked about that the RTDB, in conjunction
 9 with the -- I think you said data engine was the
 10 subsystem. Just so that we're clear on the terminology,
 11 when you were saying data engine, were you referring
 12 to --
 13 A. I was referring to the data access engine, yes.
 14 Q. Okay. At Footnote 12 you say, "the RT Server
 15 applies equally to a system with a single server or a
 16 server deployment group." What do you mean by that?
 17 A. Just that the term RT Server is meant to
 18 include the circumstance where you have multiple
 19 computers running multiple copies of the RT Server
 20 software, or conceivably multiple copies of the RT
 21 Server software running on a single computer.
 22 Q. That would be referred to as a deployment
 23 group?
 24 A. Yes.
 25 Q. So, in the scenario where there was a

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1 deployment group --
 2 A. Yes.
 3 Q. -- I guess the question, then, is you say that
 4 the term RT Server applies equally, so would the RT
 5 Server, as you've used it here, then apply to the entire
 6 deployment group?
 7 (MR. ZAYER AND MR. GEORGE RE-ENTER ROOM.)
 8 A. I'm not quite sure if I understand what you're
 9 saying. Now, what I meant by that is that you may have
 10 multiple copies of the RT server. That each of those
 11 copies is an RT Server.
 12 Q. Okay. And does each of those, then, operate
 13 independently of each other?
 14 A. As I understand the deployment group, you wind
 15 up with one of the RT Servers being the coordinator of
 16 the group of RT Servers.
 17 Q. So, if there was a scenario with a deployment
 18 group, I guess what I'm trying to understand is, how
 19 does that impact the opinions that you have here, if at
 20 all?
 21 A. Well, it impacts the opinions in several
 22 different ways, one of which is that the -- I think
 23 it's -- I think it's clear from the citation here that
 24 the IA Manager, that however you may consider it to be a
 25 part of a single RT Server, is not a part of the -- each

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 of the RT Servers in the deployment group, and is more 2 recognizably separate from the -- from the secondary RT 3 Servers than it is from the primary. 4 (MR. ZAHER, MR. GEORGE AND MR. OLEKSIUK LEAVE ROOM.) 5 Q. (By Mr. Dion) So the IA Manager that is in or 6 working with the primary RT Server. 7 A. Right. 8 Q. Is more definably separate from the other RT 9 Servers than -- I guess relative back to the 10 conversation we were having about whether or not it's 11 secondary from the primary RT Servers. 12 MR. SPANGLER: Objection, form. 13 A. That whatever our analysis is, whatever our 14 disagreements may be with respect to the single RT 15 Server, I think there's less room for disagreement when 16 you have a deployment group. 17 Q. Okay. So, if you have a deployment group and 18 then you have an IA manager, the IA Manager that you use 19 would be connected to or working with the primary RT 20 Server, is that your understanding? 21 A. I believe that's correct, yes. 22 Q. What would be the event manager in that 23 deployment group? 24 A. Well, you could actually wind up with multiple 25 event managers in that circumstance. Each of the RT</p>	<p style="text-align: right;">Page 100</p> <p>1 If you have a deployment group, is the IA Manager that 2 is a part of the primary RT Server a subsystem of the 3 secondary RT Server? 4 A. No. 5 Q. That's -- I think that's the question I want to 6 ask, so we'll just leave it at that. The engines that 7 you refer to that you say are within the RT Server, are 8 they separate from the RT Server? 9 A. In much the same way I described the IA 10 Manager, they can be, yes. 11 Q. Are they separate from the event manager? 12 A. I think you can separate the data engine. I 13 don't believe you can separate the Mdap engine. 14 Q. Why do you say that? I guess -- let me 15 withdraw that question. When you say you can separate 16 the data engine but you don't think you can separate the 17 Mdap engine -- 18 A. Right. 19 Q. Do you mean it's not -- there's no way to 20 conceive of them as separate, or for purposes of your 21 analysis relative to the claim language -- 22 MR. SPANGLER: Objection, form. 23 Q. (By Mr. Dion) -- you can't separate them? 24 MR. SPANGLER: Same objection. 25 A. I don't think that the -- I don't think that</p>
<p style="text-align: right;">Page 99</p> <p>1 Servers is recognizably an event manager. 2 Q. Okay. So, if we were to focus on, say, one of 3 the secondary RT Servers, and we'll call it RT Server 2. 4 A. Okay. 5 Q. Is the IA Manager from the primary RT Server a 6 subsystem to that secondary RT Server? 7 A. No. 8 Q. Okay. 9 MR. SPANGLER: Could you repeat the 10 question, please? 11 (THE RECORD WAS READ BACK.) 12 MR. SPANGLER: Thank you. 13 A. Sorry. As you read the question, you said a 14 "subsystem to"? I heard it as a "subsystem of." If you 15 meant "of," my answer is no. If you meant "to," I have 16 to take it a little differently. 17 Q. I think I meant "of". 18 A. Okay. 19 Q. Although I'm not sure if I fully appreciate the 20 distinction in answering the question one way versus the 21 other. 22 MR. SPANGLER: Objection, form. Why don't 23 you -- just to clear it up, why don't you ask that 24 question again? 25 Q. (By Mr. Dion) Well, let me ask this question.</p>	<p style="text-align: right;">Page 101</p> <p>1 the RT Server -- how do I put this -- is the RT Server 2 without the Mdap engine, okay? I think that you can 3 distinguish the data services from the operation of the 4 RT -- of the Mdap engine. 5 Q. Okay. And when you say you can separate the 6 data, does that mean you could create a system different 7 than IA where that was separate from the RT Server, or 8 does that mean that in this case you can view them as 9 separate? 10 MR. SPANGLER: Objection, form. 11 A. I'm not sure there's really a distinction 12 there. I think you can view the data access engine as a 13 subsystem of the RT Server. I don't see how to do that 14 with the Mdap engine. 15 Q. Okay. You talked briefly about the deployment 16 group. I asked you what would be the event manager in 17 the deployment group? 18 A. Yes. 19 Q. And as I recall, you said that you could 20 conceive of it as having each RT Server being a separate 21 event manager? 22 A. Functioning as an event manager, yes. 23 Q. As we look at the -- I guess the remaining 24 claim limitations, there's certain functionality that 25 the event manager has to carry out in the system, is</p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 102</p> <p>1 that right?</p> <p>2 A. Yes.</p> <p>3 Q. In a deployment group, then, would each</p> <p>4 separate RT Server be performing each of those steps?</p> <p>5 A. Yes, I believe that's correct.</p> <p>6 Q. Is there any difference between what we've</p> <p>7 termed a deployment group and a company just running</p> <p>8 multiple copies of IA on separate computers?</p> <p>9 MR. SPANGLER: Objection, form.</p> <p>10 A. I don't recall seeing a set -- well, certainly,</p> <p>11 if you run multiple copies, you can run multiple copies,</p> <p>12 as many as you want. I expect that the circumstance</p> <p>13 where you're running the deployment group, you're</p> <p>14 expecting that each of these deployment groups, while</p> <p>15 sharing the load of the overall process, is still</p> <p>16 serving more or less a single -- I'm not sure how to</p> <p>17 express this -- but working off of a -- maybe a single</p> <p>18 database or some other unifying part of this.</p> <p>19 So, you're running multiple copies,</p> <p>20 conceivably just because if one of them goes down, the</p> <p>21 load can be picked up by another one. I mean, it could</p> <p>22 be simple redundancy, but it could also be that you want</p> <p>23 to coordinate the operation of physically separate</p> <p>24 offices or something like that.</p> <p>25 Q. If you have each separate instance of RT Server</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. SPANGLER: Objection, form.</p> <p>2 A. I don't think so. I believe that the RT Server</p> <p>3 still functions as the event manager, and I believe the</p> <p>4 identified subsystems are still identifiable subsystems.</p> <p>5 As I said, some of the identification is a little bit</p> <p>6 easier, when you're talking about a deployment group</p> <p>7 because it's more clear -- it's clearer in that</p> <p>8 circumstance than some of the "included" -- I'm sorry,</p> <p>9 could I put quotes around that as I speak it? Some of</p> <p>10 the "included" systems, like the IA Manager, are clearly</p> <p>11 separate from the second and third RT servers. So, no,</p> <p>12 my analysis doesn't change, I don't believe.</p> <p>13 Q. Okay. The next element, element b, as you've</p> <p>14 parsed them, is "detecting one more changes in state</p> <p>15 characteristic of an event occurring within the system."</p> <p>16 So, if we go back to the example we talked about earlier</p> <p>17 this morning of one way that IA functions, the customer</p> <p>18 that calls in with a complaint, in that scenario, could</p> <p>19 you identify what you would view as the detection of a</p> <p>20 change in state?</p> <p>21 A. Yes. Yes. I think that the detection of a</p> <p>22 change in state is the recognition by the RT Server that</p> <p>23 it has received a message.</p> <p>24 Q. And I think in your report you talk about,</p> <p>25 again, for example, when the RT Client sends a request</p>
<p style="text-align: right;">Page 103</p> <p>1 functioning as its own event manager -- where am I going</p> <p>2 with this? Guess you don't know the answer to that</p> <p>3 question.</p> <p>4 A. Not yet.</p> <p>5 Q. If you have multiple copies of RT Server, and</p> <p>6 your testimony is that each of them at least could</p> <p>7 function as an independent event manager, as far as your</p> <p>8 infringement analysis goes, is there any difference</p> <p>9 there versus me just being a big company and deciding to</p> <p>10 buy, say, five copies of IA and set them up, you know,</p> <p>11 maybe one per physical location?</p> <p>12 MR. SPANGLER: Objection, form.</p> <p>13 A. Is there any difference? There are operational</p> <p>14 differences. I tend to think of the infringement</p> <p>15 analysis as just being a binary, it's an on-off kind of</p> <p>16 thing, either you're in there or you're not. So, you're</p> <p>17 not just a little bit infringing, you're infringing or</p> <p>18 you're not.</p> <p>19 Q. I understand that. I guess if I asked you to</p> <p>20 revisit the analysis you did and try to locate each</p> <p>21 element in a system, and instead of saying to you, the</p> <p>22 system is just IA, I said to you, the system is IA where</p> <p>23 there's a deployment group, would you have identified</p> <p>24 anything differently in any of the elements to say that</p> <p>25 I found infringement?</p>	<p style="text-align: right;">Page 105</p> <p>1 to the RT Server.</p> <p>2 A. Right.</p> <p>3 Q. You're identifying the same event?</p> <p>4 A. The RT Client sends it, the RT Server receives</p> <p>5 it.</p> <p>6 Q. Okay. So, in our example, that message happens</p> <p>7 to be about a complaint. At this stage, does IA know or</p> <p>8 understand or care what the content of that message is?</p> <p>9 A. I don't believe so. I believe that the receipt</p> <p>10 of the message tells them that something has changed.</p> <p>11 Q. Okay. What state changed in that example?</p> <p>12 A. Well, the state of can be something as simple</p> <p>13 as the change in a variable, the value of a variable.</p> <p>14 In this case, the state that is changed is that where in</p> <p>15 the previous state there was no message.</p> <p>16 Q. So, RT Server is sitting there waiting, it's</p> <p>17 idle, I guess, essentially, and a message comes in from</p> <p>18 RT Client, it detects that before time period one,</p> <p>19 there's no message, time period two, there is a message,</p> <p>20 and that's the change in state?</p> <p>21 A. Yes. That is a change in state.</p> <p>22 MR. SPANGLER: Objection, form.</p> <p>23 Q. (By Mr. Dion) In our example, that's the</p> <p>24 change in state that you're referring to.</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 106</p> <p>1 Q. How does RT Server detect that change in state? 2 I guess what I mean by that is, is it polling for 3 messages? Is there some other mechanism that triggers 4 RT Server to recognize that a message is coming? 5 MR. SPANGLER: Objection, form. 6 A. I don't know that I recall the mechanism. I 7 believe that the creation of the message -- I don't 8 remember the names of the procedures involved, but there 9 is -- I'm sorry -- objects that are created. But it's 10 essentially the creation, the existence of a message 11 object that comes in, that the existence of the object 12 triggers IA -- I'm sorry -- RT Server. 13 Q. Okay. So, what is the event that that 14 particular detected change in state is characteristic 15 of? 16 MR. SPANGLER: Objection, form. 17 A. Well, it's actually characteristic of multiple 18 events. It's characteristic of all communications 19 through the RT Client. Whether the event is a 20 transaction at an ATM machine or in our call center that 21 we talked about or anywhere else, the fact is that the 22 arrival of the message says something happened out there 23 that we need to pay attention to. 24 It is characteristic of an event. It's 25 characteristic of the particular event that spawned it,</p>	<p style="text-align: right;">Page 108</p> <p>1 within the system. So, in the case of IA Manager, it 2 just says that something has happened in the operation 3 of this whole system. 4 Q. Okay. But I guess, for instance, maybe you 5 could say that the change in state, that message receipt 6 is characteristic of an event occurring outside the 7 system, also, like the customer calling in. 8 A. Okay. The customer calling in is not in and of 9 itself necessarily an event, for purposes of this 10 particular piece here, but that event is very closely 11 identified with events that occur within the system. 12 It's hard to distinguish them. 13 There's almost an identity between the 14 customer action and the -- and the event that is -- 15 that's brought up there. It's easy to talk about the 16 customer event, but the event is actually in the 17 software that recognizes something that the customer has 18 done, yes. 19 Q. Okay. And then the next step, the next claim 20 element is "inferring occurrence of the event in a 21 context in which the event occurred based at least in 22 part on the detected change in state." 23 A. Correct. 24 Q. Is it your understanding, when that claim 25 element refers to "the event," is it referring to the</p>
<p style="text-align: right;">Page 107</p> <p>1 but it's also characteristic of almost any other event 2 that could occur. 3 Q. So, your understanding of this claim element is 4 the detected changes in state could be characteristic 5 merely of the fact that some event occurred? Am I 6 understanding you correctly? 7 A. No, it says specifically of an event. But the 8 thing is, once again, until you unpack the message, you 9 don't know what event you're talking about. But it's 10 characteristic of an event occurring. Some event 11 occurring. 12 And so, yes, I mean, that's -- the RT 13 Server, upon receipt of the message, detects that I have 14 a change in state, that change in state is 15 characteristic of an event occurring, both a specific 16 event and events, generally. 17 Q. And I think that claim language also goes on 18 that it's characteristic of an event occurring within 19 the system. 20 A. Correct. 21 Q. What do you understand that "within the system" 22 to mean? 23 A. "Within the system"? Well, I'm not sure how to 24 answer that. "Within the system" just means just that, 25 within the system, that it's an event that happened</p>	<p style="text-align: right;">Page 109</p> <p>1 same event that was referenced in the prior claim 2 element? 3 A. Well, right. The prior claim element is not 4 specific about it, but there is an event that occurs. 5 Now, the detection, the initial detection is agnostic, 6 it doesn't know which event we're talking about, but 7 whatever event actually spawned it, that's the event 8 we're talking about here. Is that -- 9 Q. No, fair enough, that is responsive, yes. So, 10 you've talked about this message comes in, and then the 11 system will unpack the message. 12 A. Yes. 13 Q. What do you mean by that, when you say the 14 system unpacks the message? 15 MR. SPANGLER: Objection, form. 16 A. When the message comes in, it's this glob of 17 data or glob of information. The RT Server has to parse 18 it. It has to recognize what the different pieces 19 within the message represent before it knows how to act, 20 what to do. And now that I've gotten that far, I've 21 forgotten what the question was. 22 Q. The question was, how does the system unpack 23 the message? 24 A. Okay. So the unpacking is simply running 25 through, parsing through the -- in the example we looked</p>

<p style="text-align: right;">Page 110</p> <p>1 at earlier, you've got a string of characters that's 2 broken into three lines, but just long string of 3 characters. You've got to go through and pick out which 4 part represents what piece of information I'm supposed 5 to work with. 6 Q. Are there any -- are there any limits to the 7 type of information that can be transmitted in that 8 event message? 9 MR. SPANGLER: Objection, form. 10 A. There's certainly physical limits on the 11 quantity of information. On the type of information? I 12 don't -- I'm not sure what you mean by limits on the 13 type. 14 Q. I guess, functionally, from IA itself, does 15 IA -- can IA only accept, you know, certain categories 16 of information in that message, or is it possible to set 17 it up -- 18 A. Well -- 19 MR. SPANGLER: Objection, form. 20 THE WITNESS: I'm sorry? 21 MR. SPANGLER: I said, objection, form. 22 A. You can set up IA, as I understand it, to 23 respond to any number of different types of information, 24 so just off the top of my head, I'm not sure of the type 25 of information that would be impossible to do. More or</p>	<p style="text-align: right;">Page 112</p> <p>1 If I recognize the event, then my actions 2 depend on what I have -- you know, what I'm supposed to 3 do given the different types of events that I see. So, 4 it's that whole process. It's not -- it's a non-trivial 5 process to go through and pick all this stuff out and 6 decide what you want to do and then direct doing it. 7 Q. Is all of what you've just described, is that 8 just the inferring step, or does that start to bleed 9 over into some of the other, I guess, actions that the 10 claim talks about? 11 MR. SPANGLER: Objection, form. 12 A. You infer the occurrence of the event, so the 13 occurrence of the event, I guess, you know, going back 14 to what we were talking about, the -- I actually don't 15 know for sure whether you can have messages, significant 16 messages that go back and forth that are not event -- 17 that don't identify an event, I'm not sure. 18 But the fact that you have a message that 19 includes an event, so you have the occurrence of the 20 event, and then you have the context in which the event 21 occurs, which is -- can be both the actual event, and 22 its context can at least be partially communicated by 23 which event it is, and then you have the other 24 information in the message that may also describe the 25 context that you're in.</p>
<p style="text-align: right;">Page 111</p> <p>1 less practical perhaps, but not -- I don't know about a 2 possibility limit. 3 Q. And in your report, the top of page 19, you say 4 that the RT Server detects a change in state and then 5 infers that a campaign event or offer acceptance event 6 is taking place. How does the system infer that a 7 campaign event or offer acceptance event is taking 8 place? 9 MR. SPANGLER: Objection, form. 10 A. As a result of unpacking that message. Again, 11 go back to the example that we had where you have the 12 expression the &Event=, and then it gives a string, a 13 point event, I believe, that it goes to the process of 14 analyzing that whole message and picking apart, looking 15 for the pieces that it can use to figure out what type 16 of message this is. 17 So, in this case, it goes in, it says, I 18 have a message here that has an event identified; that 19 is, I have event information in the message, and given 20 that I have event information, I then look to see what 21 event is identified. 22 Once I know what event is identified, I 23 then compare it to the types of events that I know 24 about, can handle, and see whether it's an event that I 25 actually recognize.</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. So, if we look at the example -- I think maybe 2 there's two examples in your report. You talk about a 3 campaign event or an offer acceptance event. 4 A. Yeah, I mention those, as well, yes. 5 Q. Are those two different types of events? 6 MR. SPANGLER: Objection, form. 7 A. Well, I'm not sure exactly how to characterize 8 that. The offer acceptance are things that occur within 9 a campaign. I'm not sure -- I believe that that 10 statement is taken out of the documentation. I'm not 11 sure I could identify for you right now a campaign event 12 other than an offer -- well, I'm sorry, yeah, sure, the 13 complaint is an event that's not an offer acceptance 14 event. 15 Q. You said that you think this language came out 16 of the documentation? 17 A. Yes, I believe that the phrasing came out of 18 the documentation. 19 Q. When the IA documentation uses the term 20 "event," what do you understand that to mean? 21 A. Well, I'm not sure that the IA documentation is 22 as precise as we need to be on all of this stuff. Like 23 I said, it's hard to distinguish sometimes between the 24 event of a customer or a telephone operator or somebody 25 like that and the system event that they work with in</p>

29 (Pages 110 to 113)

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1 describing what's going on.

2 It's easy to move between them, but I think
3 that even -- well, for most customer events that involve
4 interaction with the system, for a customer event,
5 there's a corresponding internal or system event.

6 Q. When you talk about event, as you're using it
7 now, when we talk about, like I said, I guess a customer
8 external event, you're talking about just a physical
9 occurrence?

10 A. Sure.

11 Q. Somebody calls, somebody clicks on a web page,
12 somebody punches their pin into the ATM, something like
13 that?

14 MR. SPANGLER: Objection, form.

15 A. Right. Something that a person does may be
16 reasonably characterized as a system event because it's
17 almost inseparable from a system event.

18 Q. Now, when you talk about a system event, I go
19 to a website, I click on a certain location, you know,
20 me moving my finger, I guess, is the physical event, but
21 the system recognizes that click. That's the system
22 event?

23 MR. SPANGLER: Objection, form.

24 A. Translates that action into, for instance, the
25 creation of the message that says, I have a complaint.

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1 Q. So, is the event the creation of the message?

2 MR. SPANGLER: Objection, form.

3 A. We're trying to parse this pretty thinly here.
4 The --

5 Q. Well, let me take a step back then. Let me
6 point you to something. If you could turn to page 104
7 of Exhibit 3. So, you see the figure at the top?

8 A. Yes.

9 Q. And right under the figure, the first bullet
10 point says, "an event is a package object that collects
11 information from the external client and requests action
12 from the RT Server."

13 So I guess what I'm just trying to
14 understand is whether or not there's a discrepancy in
15 the term "event" in the IA documentation relative to the
16 patent claims?

17 MR. SPANGLER: Objection, form.

18 A. Just to be clear, the event described here, I
19 believe, is pretty clearly an event in the -- for
20 purposes of our reading on the patent. I wouldn't
21 expect that the IA documentation is always
22 distinguishing between events at this level and events
23 at the -- you know, that are -- that are customer
24 actions or some other event that might be realistically
25 at too low a level to qualify as an event for the

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1 patent.

2 Q. Okay. My reading of this was that -- this
3 seemed to me to say that event at least some of the
4 times or one of the ways it's used in the IA
5 documentation refers to the actual kind of data message
6 that's sent from RT Client to RT Server.

7 MR. SPANGLER: Objection, form.

8 Q. (By Mr. Dion) Is that -- is that a correct
9 understanding of what this means?

10 A. Well, there you are. The recall -- the http
11 message that we analyzed earlier is that there is a
12 piece of information there that says, the event
13 identified in the message is a customer complaint, okay?
14 That event is -- hang on. Let me look at this here and
15 see if this is actually correlative to that. Okay. The
16 event described here is not the complaint event that's
17 described in that message, okay?

18 Q. Okay.

19 A. This uses the term "event." Well, I'm --
20 there's a difference in the focus or the scale of what's
21 going on here.

22 Q. The reason I'm bringing this up is because we
23 were talking about in your report where you say
24 "campaign event or offer acceptance event" and you said,
25 I believe, that that language came from the

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1 documentation. And so I guess what I was trying to
2 understand is, offer acceptance event could be a
3 customer accepted an offer, right?

4 A. Correct.

5 Q. Real world event which could correspond to a
6 system event, which is RT Client --

7 A. Communicates back.

8 Q. -- communicating that the acceptance occurred.
9 I think another way that offer acceptance that might
10 mean is actually the bundle of data sent from RT Client
11 to RT Server, based on this reading here.

12 MR. SPANGLER: Objection, form.

13 A. This use describes it as a package object,
14 okay? But it also says, a package object collects
15 information; that is, it gives it an active form. So, I
16 don't think this translates all that well. So, I'm not
17 sure there's a real close correlation here.

18 These are similar things. And I think the
19 patent events we're talking about are related to this or
20 close to it, but I'm not -- I don't think it's exactly
21 the right thing.

22 Q. I would tend to agree with you, and that's why
23 I just, as we go back and dig into this example, I want
24 to be sure that we're kind of on the same page when it
25 comes to the terminology.

30 (Pages 114 to 117)

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1 A. Right.
 2 Q. So, if we go back to this, we understand, I
 3 think, what the detected change in state is, which is
 4 the receipt of the message, and I think, as you said,
 5 that could be characteristic of a number of different
 6 events, although the patent claim seems to be referring
 7 to a particular one.

8 MR. SPANGLER: Objection, form.

9 A. Hang on. It doesn't refer necessarily to a
 10 particular one in the detecting element.

11 Q. Well, in the inferring element, where it says,
 12 "inferring occurrence of the event," right, that refers
 13 to --

14 A. In the inferring element, yes.

15 Q. But, ultimately, I guess, the event whose
 16 occurrence is inferred in this step has to be at least
 17 one of the events that the detected change in state was
 18 characteristic of?

19 A. I think that's fair enough, yes.

20 Q. That's a little awkward to say that.

21 A. Yes.

22 Q. So, I guess I just want to understand, in
 23 trying to look at this example from the system, what is
 24 the event that we're talking about?

25 A. Okay. Let's go back to our example, then.

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1 We'll see if we can work our way through it. We have an
 2 action by a customer that is characterized as an event,
 3 a complaint. We have communication of that complaint
 4 or -- let's go back. We have a capture of that
 5 information. We have the packaging transmission
 6 reception of that information. The event that we're
 7 talking about can be any one of those.

8 Q. When you say "any one of those" --

9 A. That's what I was getting at.

10 Q. Okay.

11 A. Where we have the capture of the information,
 12 it is an event. It's an event that can be stymied, for
 13 some reason. For instance, if you lose your
 14 communication. You have a package -- well, I'm sorry --
 15 well, you have the packaging, also. You may fail in the
 16 process of doing that.

17 You have the packaging, you have the
 18 transmission, you have the reception. All of those are
 19 events in the process, any one of which can be a system
 20 event. They translate to the customer action out here
 21 or the action of the operator, but it is -- I mean, we
 22 really are parsing this down very tightly. And I
 23 understand the reason for doing it, but there is still
 24 an association between each of those things and the
 25 action outside.

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1 But each of those is an identifiable event,
 2 it's an identifiable occurrence that's worthy of
 3 attention by the RT Server. So, any one of them can be.
 4 In some respects, the event that everybody is referring
 5 to is the customer event, a complaint. Nevertheless,
 6 the realization of that complaint, the events that work
 7 through the system are themselves events, as well.

8 Q. Okay. So, when we say in element c that the
 9 system has to or the event manager has to infer
 10 occurrence of the events.

11 A. Correct.

12 Q. Which event is -- in IA, which event is the
 13 event manager, the RT Server, inferring the occurrence
 14 of?

15 MR. SPANGLER: Objection, form.

16 A. Well, he's actually inferring the occurrence of
 17 each of those events. Any one of them serves as a
 18 proper object of analysis. Any one of those system
 19 events can be taken and analyzed through this process.

20 The proxy for those, of course, is the
 21 customer event. Because that's the one that's easiest
 22 to talk about. But within the system, that customer
 23 event is represented by one or a series of other events
 24 that are recognized by the RT server.

25 Q. So, the RT server infers occurrence of the

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1 collection of the data?

2 A. Yes.

3 Q. Is that right? It also infers the occurrence
 4 of the packaging of the data?

5 A. Yes.

6 Q. And it infers the occurrence of the perception
 7 of the data?

8 A. Or communication, yeah.

9 Q. Or the communication of the data. I guess,
 10 let's first talk about the collection of the data.

11 A. Okay.

12 Q. How does RT Server infer the occurrence of that
 13 event?

14 A. By taking the message apart. I mean, once
 15 again, you have to go through the process of taking the
 16 whole thing apart. But the -- that event -- without the
 17 collection of the data, you don't have the packaging in
 18 the data, you don't have the transmission of the data,
 19 you don't have the reception of the data, you don't have
 20 the detection, and you don't start inferring.

21 That is, this all connects together. So
 22 how it does it is by what I described earlier, it takes
 23 the message apart and infers that these things happened
 24 up the chain. Any -- you know, the thing is, you can
 25 characterize that inference as being any one of these

31 (Pages 118 to 121)

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1 individual things, take your pick.

2 Q. Okay. So, if we look at the Court's
3 construction of "inferring," okay, I think you have on
4 page 18 your report, "the logical process by which a
5 factual conclusion is derived from known facts by the
6 application of logical rules."

7 A. Yes.

8 Q. That's what you understand the Court -- how the
9 Court construed the word "infer," is that right?

10 A. Yes.

11 Q. So if we look at RT Server, and you say that
12 one of the things it could infer is the occurrence of
13 the event, wherein the event is the collection of data.

14 A. Correct.

15 Q. So, in view of the Court's claim construction,
16 can you explain to me how RT Server derives a factual
17 conclusion from known facts by the application of
18 logical rules relative to the collection of data?

19 MR. SPANGLER: Objection, form.

20 A. Okay. At the very simplest level, if the data
21 weren't collected, it wouldn't have a message.

22 Q. Well, I can agree that that's true, right, if
23 the data weren't collected, there wouldn't be a message.

24 A. So, in this particular case, when it takes
25 apart the message, it sees the various elements of a

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1 message, the -- let's see, I'm trying to remember. But
2 a few of them. One is the event designator, one is
3 the -- I can't remember -- the value name is CID, but I
4 don't remember the field designator. And one of them is
5 a value that's just called value.

6 So, each of the elements in the message is
7 taken, detected, understood, and in the process of
8 understanding this, it's going through the logical
9 process that I was describing earlier. It has to
10 compare these things to rules that it has in place.

11 That is, I have something that claims it's
12 an event, do I recognize it as an event? Okay? Is this
13 complaint event one of the things that I know? I have a
14 value that's supposed to be a customer I.D. Is there
15 such a customer? Do I -- you know, et cetera.

16 Those things are all part of the inferring
17 the occurrence of the particular event. That is, I
18 received this data, this data was collected, this data
19 was packaged, this data was transmitted.

20 Q. Does RT Server, at some point, actually derive
21 a factual conclusion that the data was collected?

22 A. It derives a factual conclusion that the data
23 represents an outside action.

24 Q. Okay. But does it ever derive the factual
25 conclusion that the data was collected?

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1 MR. SPANGLER: Objection, form.

2 A. I don't see how -- does it -- does it say, ah-
3 hah, I received this, I can tick off a box somewhere
4 that says I collected the data? I don't think that's a
5 sensible question in this circumstance. The data
6 collection is a fact. It is --

7 Q. Well, the data collection is a fact, and I
8 agree with you the data wouldn't be there if it wasn't
9 collected. But isn't the data collection -- the fact of
10 the data collection itself completely ignored by RT
11 Server?

12 MR. SPANGLER: Objection, form.

13 A. I don't think so.

14 Q. RT Server cares what the data is, right?

15 A. Correct.

16 Q. But you just said, it doesn't check off a box
17 to say, oh, this data's been collected.

18 MR. SPANGLER: Objection, form.

19 A. Well, metaphorically, I guess -- I'm sorry.
20 Metaphorically -- geez. It does recognize, yes, that
21 the data's been collected. It distinguishes between --
22 it distinguishes between -- it does know which data is
23 collected data and which data represents something else.
24 That is, it knows which data to use in which
25 circumstance. So, yeah, I think it does.

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1 Q. So you're saying that it is your opinion, then,
2 that RT Server derives the factual conclusion that data
3 has been collected?

4 A. I think the answer has to be yes.

5 MR. SPANGLER: Objection, form.

6 A. Yeah. That wasn't the way I was thinking of
7 it, but I believe in response to your question, the
8 answer's yes.

9 Q. How exactly does RT Server do that?

10 A. Hang on. RT Server receives this entire URL
11 message that we've looked at on page 3. It
12 distinguished the fact that the value web appoint
13 directs it to some activity, distinguishing that from
14 the fact that the encoding value tells it how to look at
15 data and distinguishes that from the variables, the
16 package, the event, the event, the field and the value,
17 those things it treats as collected data. The other
18 things it treats in a different way.

19 So, yes, I think it distinguishes that
20 you've collected -- you know, certain data it treats as
21 collected information. Other data, it treats as context
22 or environment in which it's working.

23 Q. So does it ever register in any way into some
24 kind of table or field or system variable, the fact that
25 data has been collected?

32 (Pages 122 to 125)

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<p style="text-align: right;">Page 126</p> <p>1 MR. SPANGLER: Objection, form.</p> <p>2 A. Yes.</p> <p>3 Q. How does it do that?</p> <p>4 A. In the fact that it uses that data as collected</p> <p>5 data to answer the message that's been posed to it.</p> <p>6 Q. Okay. So, again, the event we're talking about</p> <p>7 at this point is the data collection.</p> <p>8 A. Collection.</p> <p>9 Q. What are the known facts?</p> <p>10 A. What are the known facts?</p> <p>11 Q. Yeah. What are the known facts that RT Server</p> <p>12 uses?</p> <p>13 A. There are a couple of things here. One is that</p> <p>14 the CID value is supposed to represent a customer, okay?</p> <p>15 And so one of the facts that it determines that's a</p> <p>16 contextual information here is, is this a real customer?</p> <p>17 By the same token, the complaint event tells it whether</p> <p>18 it's a valid event that it's dealing with.</p> <p>19 Q. So that information in the message are the</p> <p>20 known facts?</p> <p>21 MR. SPANGLER: Objection, form.</p> <p>22 Q. (By Mr. Dion) Is that my -- am I understanding</p> <p>23 that correctly?</p> <p>24 A. I'm sorry. Where's your known fact? Let's</p> <p>25 look at the language.</p>	<p style="text-align: right;">Page 128</p> <p>1 sense, though, each of those things is something that</p> <p>2 the system was already aware of. I can deal with</p> <p>3 something that identifies itself as an "and event".</p> <p>4 Okay?</p> <p>5 Q. Okay.</p> <p>6 A. So, in this instance, I think that that would</p> <p>7 serve.</p> <p>8 Q. And what logical rule or rules does the RT</p> <p>9 Server apply to those known facts?</p> <p>10 A. It applies the rule of recognizing that this is</p> <p>11 an event that -- I'm sorry, that "and event" is one of</p> <p>12 those things that I know already. It has to go through</p> <p>13 a logical process to discover that that's something that</p> <p>14 I recognize, that's something I can deal with.</p> <p>15 Q. Can you -- are you aware of any documentation</p> <p>16 that would kind of, I guess, describe what those rules</p> <p>17 are, or any source code that would qualify as these</p> <p>18 particular logical rules --</p> <p>19 A. This particular one? I don't think I could</p> <p>20 identify anything, no.</p> <p>21 MR. SPANGLER: Objection, form.</p> <p>22 Q. (By Mr. Dion) I'm sorry, when you say "this</p> <p>23 particular one" -- I want to make sure I --</p> <p>24 MR. SPANGLER: Objection, form.</p> <p>25 A. What we were just talking about, that "and</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Sure. So, the Court's construction of</p> <p>2 inferring, again, "logical process by which a factual</p> <p>3 conclusion is derived from known facts by the</p> <p>4 application of logical rules.</p> <p>5 So we're talking about here the event</p> <p>6 that -- the system is inferring occurrence of the event.</p> <p>7 We said, the event is collection of data by the system.</p> <p>8 A. Right.</p> <p>9 Q. So, in order to infer occurrence of the</p> <p>10 event --</p> <p>11 A. Okay.</p> <p>12 Q. -- the system has to apply a logical process to</p> <p>13 known facts.</p> <p>14 A. Right.</p> <p>15 Q. And derive a factual conclusion.</p> <p>16 A. Okay. Well, getting down at that level,</p> <p>17 talking about this type of event, known facts in this</p> <p>18 circumstance are that it recognizes, for instance, that</p> <p>19 "and package" is a type of element that it can analyze.</p> <p>20 It recognizes that "and event" is a type of an element</p> <p>21 that it can recognize, "and field" is a type of an</p> <p>22 element that it can recognize, "and value" is a type of</p> <p>23 thing that it can recognize. Those are all known facts.</p> <p>24 Those are preexisting information within</p> <p>25 the system that it's prepared to deal with. So, in this</p>	<p style="text-align: right;">Page 129</p> <p>1 event" is recognized. I don't know where that's done</p> <p>2 exactly, no.</p> <p>3 Q. Did you look for that?</p> <p>4 A. I don't think so.</p> <p>5 Q. What did you find that led you to the</p> <p>6 conclusion that the system infers occurrence of, for</p> <p>7 example, the event of data collection?</p> <p>8 MR. SPANGLER: Objection, form.</p> <p>9 A. Well, just what we've been through here. I've</p> <p>10 read the documentation. Like I said, this event is a</p> <p>11 proxy for the event of the customer making a complaint.</p> <p>12 Q. So, is the system inferring occurrence of the</p> <p>13 customer complaining?</p> <p>14 A. It certainly infers that, as well. But, again,</p> <p>15 that customer complaining event is, for most practical</p> <p>16 purposes -- I'm sorry, is for very detailed purposes</p> <p>17 outside the system.</p> <p>18 Q. Okay. So, the system looks at the message that</p> <p>19 it receives.</p> <p>20 A. Yes.</p> <p>21 Q. It knows that there are certain fields within</p> <p>22 the message that contain types of information that it's</p> <p>23 capable of dealing with?</p> <p>24 MR. SPANGLER: Objection, form.</p> <p>25 A. It recognizes --</p>

33 (Pages 126 to 129)

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1 Q. Okay.
 2 A. -- by the logical process we were talking
 3 about. It determines that it can deal with this.
 4 Q. Is the system, RT Server, recognizing that this
 5 is the type of information it is capable of dealing
 6 with?
 7 A. Yes.
 8 Q. Is that an inference?
 9 A. Yes.
 10 Q. How is that an inference?
 11 A. Well, what's the definition of "inference"?
 12 This says, it's a logical process by which the fact that
 13 information -- I'm sorry. That's inferring context. Do
 14 we have -- "a logical process by which a factual
 15 conclusion is derived from known facts by the
 16 application of logical rules."
 17 So, yes, it has known facts that it has
 18 built into it the knowledge, the information that there
 19 are certain things -- certain types of information that
 20 I can deal with. I can deal with event information, I
 21 can deal with field information, I can deal with value
 22 information, et cetera.
 23 So, something that identifies itself as a
 24 potential of the type of information I can deal with, it
 25 has to say, can I actually deal with this? Do I

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1 actually know what I'm talking about? Do I actually
 2 know what I'm working with?
 3 And in order to do that, it has to go
 4 through the logical process of saying, do I recognize
 5 this as one of the things that I am capable of dealing
 6 with, or do I reject it as unrecognizable?
 7 Q. Is the fact that a certain type of data is data
 8 RT Server knows how to handle the same as the fact that
 9 RT Client collected data?
 10 MR. SPANGLER: Objection, form.
 11 A. No.
 12 Q. Okay. We've been talking about the event here
 13 as just the collection of the data.
 14 A. Right.
 15 Q. But then when we're talking about the
 16 inference, we're talking about the type of data and
 17 whether or not the system can handle it.
 18 A. Right.
 19 Q. So, is it still, then, your opinion that the
 20 system is inferring the fact that data was collected?
 21 A. We haven't gotten to there yet.
 22 Q. Well, that's where I'm trying to get to is,
 23 does that --
 24 A. Yes. My opinion remains unchanged through this
 25 conversation, yes.

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1 Q. Okay. So, how then does RT Server infer the
 2 fact that RT Client collected data?
 3 A. It infers the fact then, okay? The message
 4 identifies a type of data that I believe I have
 5 collected, and then it identifies a value associated
 6 with that data that I believe I have collected.
 7 So, for instance, when you click on a
 8 certain button on the web page or if the operator clicks
 9 on a certain button on the page that the operator's
 10 working with, it's going to say, when you click this
 11 button, the event that you're talking about is a
 12 complaint event, and it will put that value into this
 13 stream.
 14 We've previously identified, perhaps by
 15 either asking the customer on the telephone or by his
 16 filling in a field on the web page something that allows
 17 us to get his customer I.D. number, okay? And then we
 18 have identified other values that are associated with
 19 this by picking them up in data fields or whatever.
 20 But we build this package by different
 21 operations on the screen or by the customer or by the
 22 phone operator that fills each of these values
 23 independently, and then at some point, you click a
 24 button that says "go," okay? And those collected bits
 25 of data are then packaged into this message, which is

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1 then transmitted out.
 2 So, yes, the RT Server infers that the data
 3 has been collected, because it identifies the type of
 4 data that's expecting and sees a value that it can deal
 5 with.
 6 Q. And then it reaches a conclusion, RT server
 7 reaches a factual conclusion that data has been
 8 collected.
 9 A. Yes.
 10 MR. SPANGLER: Objection, form.
 11 Q. (By Mr. Dion) I might have already asked you
 12 this, but are you aware of, specifically, where in the
 13 code that process occurs?
 14 A. No.
 15 Q. What does it mean for an inference to be based
 16 on something?
 17 A. That the inference uses the information that
 18 it's based on. That the information that's -- that
 19 we're referring to as being based on figures into the
 20 process, the inference.
 21 Q. So, when you say "figures into the process," we
 22 have a definition of inferring here, which is "logical
 23 process by which a factual conclusion is derived from
 24 known facts." So, would the -- if I said an inference
 25 was based on something, would that whatever I said it

34 (Pages 130 to 133)

<p style="text-align: right;">Page 134</p> <p>1 was based on have to be among the known facts --</p> <p>2 MR. SPANGLER: Objection, form.</p> <p>3 Q. (By Mr. Dion) -- That are used?</p> <p>4 A. It could be among the known facts or among the</p> <p>5 logical rules.</p> <p>6 Q. Okay. So, the inference that we were just</p> <p>7 talking about, where the system infers that data has</p> <p>8 been collected, how is that based on the detected change</p> <p>9 in state?</p> <p>10 A. It is based on the detected change in state, in</p> <p>11 the sense that the logical process begins with that</p> <p>12 detected change in state.</p> <p>13 Q. Okay. Is that detected change in state one of</p> <p>14 the known facts that the logical rules are applied to?</p> <p>15 A. The detected change in state is a -- is a fact</p> <p>16 that causes the application of a logical rule. So, as I</p> <p>17 was saying earlier related to the logical rules, it's</p> <p>18 not just a known fact. I mean, if you parse this down</p> <p>19 again, to a certain level, if you detect a change in</p> <p>20 state, once you've detected it, it is now a known fact,</p> <p>21 okay?</p> <p>22 I didn't actually analyze it that way,</p> <p>23 but -- and you could do that. The actual analysis here</p> <p>24 is that the detected change in state is part of the</p> <p>25 application of the logical rules that get you where you</p>	<p style="text-align: right;">Page 136</p> <p>1 that. When RT Server is applying logical rules to known</p> <p>2 facts to derive the conclusion that data was collected,</p> <p>3 do you know, specifically, what rules it's applying?</p> <p>4 A. I couldn't point you to that exactly, no.</p> <p>5 MR. SPANGLER: Objection, form.</p> <p>6 Q. (By Mr. Dion) In this example that we've been</p> <p>7 talking about, what context does the RT Server infer?</p> <p>8 A. What context does it infer? Well, again, the</p> <p>9 context is -- what's the statement here?</p> <p>10 Q. The construction of context?</p> <p>11 A. Yes.</p> <p>12 Q. It's on -- it's on page 18. It's the first</p> <p>13 thing under the heading "construction."</p> <p>14 A. Here we go. "Information already existing</p> <p>15 within the system that becomes relevant by the</p> <p>16 occurrence." So, we have multiple bits of context in</p> <p>17 the example complaint message that we're talking about.</p> <p>18 (MR. GEORGE RE-ENTERS ROOM.)</p> <p>19 Q. (By Mr. Dion) Okay.</p> <p>20 A. Okay? We've already identified the preexisting</p> <p>21 knowledge that it can deal with certain types of</p> <p>22 elements in the message, and then we have other</p> <p>23 contextual information that is things that already</p> <p>24 existed within the system. For instance, in the message</p> <p>25 that we looked at, the CID value should previously be in</p>
<p style="text-align: right;">Page 135</p> <p>1 want to go.</p> <p>2 (MR. ZAHER AND MR. OLEKSIUK RE-ENTER ROOM.)</p> <p>3 Q. (By Mr. Dion) Is the detected change in state</p> <p>4 one of the rules?</p> <p>5 MR. SPANGLER: Objection, form.</p> <p>6 A. It is probably better characterized as</p> <p>7 information that -- on which the rules operate. The</p> <p>8 rules don't begin until there's a detected change in</p> <p>9 state.</p> <p>10 Q. So the detected change in state triggers the</p> <p>11 inference.</p> <p>12 MR. SPANGLER: Objection, form.</p> <p>13 A. It begins the inference.</p> <p>14 Q. It begins the inference? I know you said that</p> <p>15 you hadn't identified the source code that actually</p> <p>16 carries this out. Do you have any understanding of what</p> <p>17 the logical rules are that the system is applying?</p> <p>18 MR. SPANGLER: Objection, form.</p> <p>19 A. Yes, I think so.</p> <p>20 Q. What do you understand them to be?</p> <p>21 A. Well, it's divided into several different</p> <p>22 things, but you have the actual source code itself, and</p> <p>23 then in a functioning system, you have the rules that</p> <p>24 are part of the RT Miner system.</p> <p>25 Q. I guess my question was more specific than</p>	<p style="text-align: right;">Page 137</p> <p>1 the system. It's an identified customer.</p> <p>2 Q. Okay. So, context, again, "information already</p> <p>3 existing within the system that becomes relevant upon</p> <p>4 the occurrence of the event." So, if the event is the</p> <p>5 fact that data was collected --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- how does that information that you've just</p> <p>8 discussed become relevant upon the occurrence of</p> <p>9 collecting data?</p> <p>10 MR. SPANGLER: Objection, form.</p> <p>11 A. Because that is the information that's going to</p> <p>12 be used to satisfy the request from the client system.</p> <p>13 Q. How does RT Server infer the context?</p> <p>14 A. I'm sorry?</p> <p>15 MR. SPANGLER: Objection, form.</p> <p>16 A. What we discussed earlier, by the application</p> <p>17 of logical rules. Again, I've talked about unpacking</p> <p>18 this and recognizing the bits that are here several</p> <p>19 times, but it's that same process. It infers the</p> <p>20 context by picking those elements of the message, and,</p> <p>21 again, figuring out whether they are reasonable,</p> <p>22 sensible, how they apply to the request that's been</p> <p>23 made.</p> <p>24 Q. When you say, "the request that's been made,"</p> <p>25 what do you mean by that?</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 A. That message represents a request. I have a 2 customer complaint. With the information that I've 3 included in this message, you should know how to answer 4 a customer complaint event. 5 Q. So it's a request to RT Server to return 6 something back to RT Client. 7 A. Right. 8 Q. What's returned back, typically, by IA? 9 A. In this example, what's returned back is 10 instructions or message on how to deal with -- again, 11 treating it as a call center, it's instructions or 12 message on how to deal with this client, what you can 13 offer him, what you can deal -- what you have available 14 to you to mollify this complaining customer. 15 Q. So, the context, the information that's already 16 within the system, how does IA determine which 17 information out of all the information available to it 18 is in context to this particular event? 19 MR. SPANGLER: Objection, form. 20 A. Once again, certain things are pretty firmly 21 built -- well, let me distinguish that. Certain things, 22 like the types of fields that it can deal with is built 23 in. But even things like the CID value, the system, 24 again, once it's identified the type of complaint, the 25 exact type of -- I'm sorry, the exact type of message</p>	<p style="text-align: right;">Page 140</p> <p>1 the message to direct them to find the types of 2 responses that are appropriate for the message and the 3 individual involved. 4 Q. Maybe my question, I think maybe falls somewhat 5 inbetween those steps. So, if you have a customer I.D., 6 and that's all that's in that message that's sent from 7 RT Server to -- excuse me -- from RT Client to RT Server 8 is just a number, is that right? 9 A. However the customer I.D. is formatted, whether 10 it's numbers or alphabetic streams or full names and 11 addresses, whatever they do to identify the customer. 12 Q. Does RT server, without doing anything else, 13 upon receiving that number, is RT Server aware of what 14 type of customer that person is, just based on the 15 number? 16 MR. SPANGLER: Objection, form. 17 A. I think, in general, the answer to that would 18 be no. 19 Q. Okay. Because we talked about it receives the 20 number then it passes information to either the 21 recommender or the RT miner to get a response back about 22 what information to pass back to RT Client. One of the 23 things you talked about is, is this a long-standing 24 customer, is this a new customer, is this a problem 25 customer? Where does that information come from?</p>
<p style="text-align: right;">Page 139</p> <p>1 that this is, this is a customer complaint message, then 2 that lets it know that I should expect certain other 3 pieces of information. 4 Some of them may be required and some of 5 them may be optional, but there are certain restricted 6 sets of information that I should be looking for then. 7 One of those pieces of information is a customer I.D. 8 The way -- the context in which this system is going to 9 deal with the complaint is determined, in part, by the 10 actual value of that customer I.D. 11 Q. Could you explain that a little more? 12 A. I think so. The actual value of the customer 13 I.D. identifies this as a long-standing customer or 14 somebody we never actually heard of or somebody we're 15 trying to get rid of as a customer because they complain 16 too much. Any number of possible ways of doing that. 17 Q. So, when RT Server receives the message and one 18 of the pieces of information is the customer I.D., what 19 does RT Server do with that information to get to the 20 conclusion of the type of customer that this customer 21 is? 22 MR. SPANGLER: Objection, form. 23 A. I believe that's when RT Server invokes its RT 24 miners or recommenders, depending on the type of message 25 that you're talking about, and uses the information from</p>	<p style="text-align: right;">Page 141</p> <p>1 MR. SPANGLER: Objection, form. 2 A. It comes, in part, out of the RTDB. It comes, 3 in part, out of the way the rules are made up for the 4 miners. 5 Q. Are there rules in the miners that would allow 6 the miner to identify just from the customer number 7 whether they're a long-term customer versus a new 8 customer? 9 MR. SPANGLER: Objection, form. 10 A. I don't know. 11 Q. If the information is in the RTDB, how would RT 12 Server go about getting that information after it 13 received the message? 14 MR. SPANGLER: Objection, form. 15 A. Well, the way that you would get the 16 information would have to be inferences taken off of the 17 customer I.D., because that's -- if that's the only 18 information you're feeding it, then you have to be able 19 to dig through or mine through the data, based on that 20 customer I.D. And there are -- you know, based on the 21 exact customer I.D., you find other information, which 22 may lead you to other data tables, which may lead you to 23 other data tables, and according to rules that you have 24 set up, some sort of that information is applicable to 25 customer complaints and some of it is not.</p>

<p style="text-align: right;">Page 142</p> <p>1 Q. So, when you say -- if you infer that 2 information, when you get an event message, and it says, 3 here's the customer number, and I'm telling you that the 4 event type is a complaint event, would that then trigger 5 the application of certain rules within RT Server that 6 says, go out to, for instance, RTDB and find out the 7 value in the field for how long they've been a customer? 8 A. I'm not sure if it triggers the rules directly 9 itself or whether it's used as a basis for other action, 10 but the results that you get are based on the 11 information that you put in, yes. 12 Q. So, would there be a fixed set of rules within 13 RT Server that says, when the event type is complaint, 14 go get this particular information from the RTDB? 15 A. I think that -- I think fixed set of rules is 16 probably too strong, but I believe that you can have 17 rules associated with that event, yes. 18 Q. Okay. So there would be rules associated with 19 the event type of complaint. 20 A. There would be rules that respond to that. The 21 association, I'm not quite sure what you have there, but 22 there will be rules that would be appropriate to apply 23 when you have this type of -- this type of event, and 24 there are rules that you would bypass, I believe. 25 Q. Okay.</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. That process of inferring context, how is that 2 based on the detected change in states? 3 A. Sorry? 4 MR. SPANGLER: Objection, form. 5 Q. (By Mr. Dion) The process of RT Server 6 inferring context, the context in which the event 7 occurred, how is that based on the detected change in 8 state? 9 A. Well, again, the detected change in state is 10 the receipt of a message or the existence of a message, 11 and the inferring of the context is based on the 12 existence of the message. 13 Q. By that do you mean that it only happens 14 because of the existence of the message? 15 A. Yes. 16 Q. Why weren't you able to find those rules? 17 MR. SPANGLER: Objection, form. 18 A. The rules were stored in a proprietary format, 19 and I did not get a reader to read that format. 20 Q. What do you mean by "proprietary format"? 21 A. I can't remember. DM, DMX, something like 22 that. File extensions. It's a format that I couldn't 23 read with the software that was on the PC that I was 24 provided. 25 Q. Proprietary to Infor?</p>
<p style="text-align: right;">Page 143</p> <p>1 A. But it may also be that those rules are 2 restricted by the customer I.D. 3 Q. Then, those rules would dictate what 4 information is retrieved from the database? 5 MR. SPANGLER: Objection, form. 6 A. Dictate, determine, influence, yes. 7 Q. Is that process the inference of context? 8 MR. SPANGLER: Objection, form. 9 A. I'm not sure how -- "that process" is what? 10 Q. Okay. Fair enough. Is the process of the 11 message coming in with an event type starting -- I don't 12 want to say triggering, that seemed to be maybe a little 13 overstated -- 14 A. Okay. That's all right. 15 Q. -- but starting a process where RT Server, 16 based on certain rules, retrieves information from RTDB 17 to use in conjunction with the message in the event? 18 MR. SPANGLER: Objection, form. 19 A. At least some of it is. I'm not sure if all of 20 it is, but some of it is, yes. 21 Q. Were you -- well, I don't know if were you 22 able -- did you ever locate or review any of these rules 23 in your source code review? 24 MR. SPANGLER: Objection, form. 25 A. No. I wasn't able to.</p>	<p style="text-align: right;">Page 145</p> <p>1 A. I believe so, yes. 2 Q. Did you ask? 3 A. Yes. 4 Q. Who did you ask? 5 A. I don't recall. 6 Q. But you were never able to get that software? 7 A. I never got it. 8 Q. Did anybody ever tell you why you weren't able 9 to get it? 10 A. No. There are examples of those things in the 11 documentation. 12 Q. On page 20 of your report, you say here that RT 13 Server also uses functions to infer context. 14 A. I'm sorry. Where are we? 15 Q. I'm on the third full paragraph. 16 A. Okay. Got it. Yes. 17 Q. What do you mean by that exactly? 18 MR. SPANGLER: Objection, form. 19 A. Okay. Well, the -- when I talked about working 20 with that message, there are lots of places in the 21 system where it does -- sometimes re-does pulling apart 22 bits of information. I was trying to identify something 23 here pretty closely that I believe is involved in 24 processing the messages, like the one I identified in 25 the example.</p>

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<p style="text-align: right;">Page 146</p> <p>1 Q. Okay. So, the function -- the one function you</p> <p>2 talk about here is the process event data function?</p> <p>3 A. Yes.</p> <p>4 Q. What is that function?</p> <p>5 A. I couldn't tell you right now. It's one that I</p> <p>6 identified in the process of going through all this</p> <p>7 stuff, but I don't remember it explicitly.</p> <p>8 Q. Would there be something perhaps in the</p> <p>9 exhibits that's maybe not in here that may help you</p> <p>10 recall that?</p> <p>11 A. Process event data I think is in the source</p> <p>12 code. I suspect it's in some we printed out.</p> <p>13 Q. Okay. But you think -- but not in the</p> <p>14 exhibits, you don't think?</p> <p>15 A. I don't remember. I just don't remember. I'm</p> <p>16 sorry.</p> <p>17 Q. Okay. Do you know what that -- like how that</p> <p>18 function works or anything about it, more than just the</p> <p>19 name here?</p> <p>20 A. I think I knew a little bit more about it at</p> <p>21 the time, but I don't remember.</p> <p>22 Q. Do you have an understanding of how that</p> <p>23 function is the system inferring context?</p> <p>24 A. Again, I can't recall any details of that</p> <p>25 function at the moment.</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Same event.</p> <p>2 MR. SPANGLER: Objection, form.</p> <p>3 A. The same event, I believe.</p> <p>4 Q. That's the event of the system collecting data?</p> <p>5 A. I believe it's actually context relative to any</p> <p>6 event that comes from that session.</p> <p>7 Q. A little further up on that same page, the kind</p> <p>8 of second paragraph, you say that RT Server infers</p> <p>9 context, such as channel, based on information contained</p> <p>10 in the event message?</p> <p>11 A. Yes.</p> <p>12 Q. When you say "channel," what are you referring</p> <p>13 to?</p> <p>14 A. I'm referring to -- I believe it's used in the</p> <p>15 documentation. I'm referring to the channel as whether</p> <p>16 it's coming in from a web page or whether it's coming in</p> <p>17 from an ATM machine, whether it's coming in from a call</p> <p>18 center, et cetera.</p> <p>19 Q. The channel information, isn't it just</p> <p>20 contained in the event message?</p> <p>21 MR. SPANGLER: Objection, form.</p> <p>22 A. Contained in the event message. I believe it</p> <p>23 accompanies the event message. I'm not sure if it's in</p> <p>24 the event message.</p> <p>25 Q. Okay. Fair enough. If it accompanies the</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. Okay. But I think what -- if I understood what</p> <p>2 you said is essentially this is kind of consistent with</p> <p>3 the discussion we just had?</p> <p>4 A. I believe so, yes.</p> <p>5 Q. About unpacking the data and looking at the</p> <p>6 different fields?</p> <p>7 A. Right.</p> <p>8 MR. SPANGLER: Objection, form. If you</p> <p>9 can, let him finish the question and answer so the</p> <p>10 record's clear, please.</p> <p>11 THE WITNESS: I have been chastised.</p> <p>12 Q. (By Mr. Dion) The reference just below that to</p> <p>13 document INF 0413186.</p> <p>14 A. Yes.</p> <p>15 Q. Page 17 to 15. You just kind of say, see also,</p> <p>16 and then you cite to that. What's the purpose of that</p> <p>17 citation there?</p> <p>18 A. The session I.D. is a part of one of the</p> <p>19 objects that's created in the transmission of this</p> <p>20 information that we see in the example that we've been</p> <p>21 talking about. It doesn't show up in that part of it</p> <p>22 because it's an outer part of the object that transmits</p> <p>23 that message, I believe. But that was an example of</p> <p>24 other context information, yes.</p> <p>25 Q. That would be context relative to what event?</p>	<p style="text-align: right;">Page 149</p> <p>1 event message, it's in the form of -- there's a data</p> <p>2 field, that data field might be channel or whatever the</p> <p>3 field's called?</p> <p>4 A. I'm not sure if that's the way it's identified.</p> <p>5 I don't know the -- I don't know if it just says, you</p> <p>6 know, I'm from a -- I'm from a website or I'm from a</p> <p>7 call center or I'm from an ATM machine, but I believe</p> <p>8 there's information in the system that effectively</p> <p>9 imparts that level or that type of information, yes.</p> <p>10 Q. I guess whatever information -- however the</p> <p>11 information is structured, there's some piece of data</p> <p>12 that comes along with the message that indicates, I came</p> <p>13 from this channel?</p> <p>14 MR. SPANGLER: Objection, form.</p> <p>15 A. I think so, yes. Again, I don't remember the</p> <p>16 detail on this, but some piece of data that's in it, or</p> <p>17 it could just be the type of message that it is or the</p> <p>18 type of object that's being communicated through. I</p> <p>19 don't recall that level.</p> <p>20 Q. Okay. So, when RT Server receives that</p> <p>21 message, doesn't it -- isn't it able to just recognize,</p> <p>22 based on that data, what the channel was?</p> <p>23 MR. SPANGLER: Objection, form.</p> <p>24 A. Well, again, the question seems to presume that</p> <p>25 there is something that's automatic there. None of this</p>

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<p style="text-align: right;">Page 150</p> <p>1 stuff happens without having to do some work. 2 Regardless of what information is received, the system 3 has to examine the information and determine what it 4 represents. 5 None of that happens for free. And every 6 time that this information is communicated, it has to 7 be -- has to be split up, it has to be examined, it has 8 to be analyzed, it has to be vetted, it has to be -- you 9 know, there's a process that goes on here. It's not 10 just received wisdom that happens here, it's got to be 11 worked. 12 Q. So if data comes in about the channel, RT 13 Server then might go to a look-up table to say, if the 14 data -- if the value is one, then it was web, if the 15 value was two, then it was call center? 16 A. Well, it could be something that simple, I 17 don't think it is, but the -- yes, in some way, it has 18 to recognize, determine what the channel is. 19 Q. And is that inferring? 20 A. Yes. 21 Q. So, if the system gets the data, looks at the 22 value, and there's a rule in RT Server that says, take 23 that value, compare it to the look-up table and return 24 channel, that process would be inferring that context? 25 A. Yes, that process infers. Application of</p>	<p style="text-align: right;">Page 152</p> <p>1 the -- some of the constructions you can do out of the 2 RT Studio. I just remember running across a type of 3 file that I wanted to take a look at that I wasn't able 4 to. 5 Q. What's your basis for believing that those 6 files -- I understand you couldn't look at them -- but 7 that they had that content? 8 A. Actually, let me think about this a second. I 9 may have something here. It's in one of the references 10 here. I think I can find it in here. 11 Q. Okay. Did you put him up to this? 12 MR. SPANGLER: I have no idea what DMX is. 13 MR. DION: Every question I ask, just flip 14 through the exhibits. 15 MR. SPANGLER: Just wait till we get to OM, 16 baby. He has spent very little time going through 17 stuff, I just want to say on the record. 18 A. Close, but no cigar. I don't think I see it 19 here. 20 Q. Okay. Do you have any recollection, as you sit 21 here today, of why it is that you believe those .DMX or 22 .DM files contained the rules? 23 A. The -- 24 MR. SPANGLER: Objection, form. 25 A. The precise reason, no, but I do believe that</p>
<p style="text-align: right;">Page 151</p> <p>1 logical rules to previously known information to get a 2 logical result. 3 MR. DION: Okay. I think this is a good 4 time for a break. We're running short on time on the 5 tape. 6 VIDEOGRAPHER: The time is 2:05, we're off 7 the record. 8 (OFF THE RECORD FROM 2:05 TO 2:25 P.M.) 9 VIDEOGRAPHER: Time is 2:25, we're back on 10 the record. 11 Q. (By Mr. Dion) I'd asked you a few questions 12 earlier about the particular rules in the system that 13 performed this inference function, and I think you said 14 there was a certain file type and you weren't able to 15 access it? 16 A. Yes. 17 Q. What file type was that, again? 18 A. I don't remember exactly, but I think it was DM 19 or DMX or something like that. 20 Q. And it is your understanding that those are the 21 files that contain the rules that RT Server uses to 22 drive this inference process? 23 MR. SPANGLER: Objection, form. 24 A. I believe it contains some of the information 25 for that. I don't know if it was the RT miner rules or</p>	<p style="text-align: right;">Page 153</p> <p>1 they contained -- for whatever reason, I believe that 2 they were part of the system that I wanted to look at, 3 but I can't tell you any more detail. 4 Q. And just so it's clear, I think you said 5 earlier that you asked counsel for -- if they could get 6 you the reader for those files? 7 A. I don't think I identified who I asked. I 8 don't really recall whether I asked somebody at the law 9 offices where we were doing the review or whether I 10 asked Andrew or John Edmonds. I think those would have 11 been the only places I would have or could have asked. 12 Q. But generally, you were able to access the 13 source code for the RT Server, is that right? 14 A. Generally, yes. 15 Q. And for the RT miners? 16 A. Yes. 17 Q. You didn't identify anything in there that you 18 could point out to me today, at least, as the rules that 19 facilitate this inference process? 20 A. Let's ask a question, then let me see if I can 21 come up with something for you. 22 Q. Are you aware of any of the source code within 23 IA that carries out this inferring process? 24 MR. SPANGLER: Objection, form. 25 A. Generally speaking, the -- you can point to the</p>

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<p>1 RT miner code, that Mdap engine that does that. More 2 specific than that, I don't have a proper recollection 3 of. 4 Q. Okay. Right before the break, we were talking 5 about channel information as one form of context and how 6 the system might infer that channel information. 7 A. Right. 8 Q. In your view, what we've now described as that 9 inference, would that be any different than recognizing 10 the channel? 11 A. I think it's possible in some context you could 12 say that, but I don't know what the distinction is that 13 you're drawing. 14 Q. Like if the claim language, if instead of 15 saying inferring context, it said recognizing context, 16 would that change the meaning of the claim to you? 17 MR. SPANGLER: Objection, form. 18 A. Well, that's easy. The claim language is what 19 it is, it says, and it's been construed, and what I 20 described sits directly on top of that claim language. 21 It does precisely what's described as inferring. 22 Q. If the claim language had "recognizing," then 23 would that be different to you? 24 MR. SPANGLER: Objection, form. 25 A. Depends on how the Court construes</p>	<p>1 A. I don't think so, no. 2 Q. Okay. So -- 3 A. I think it might have been a little confusing 4 to use "action" in both circumstances. 5 Q. Okay. But you think that they could be the 6 same thing? 7 A. Yes. 8 Q. And you say in your report, this is at the top 9 of page 22, "RT Server uses the contextual data to 10 determine what new actions to take." In the example 11 we've been talking about, how is that carried out? 12 A. Again, that's the RT Server, using the RT 13 miners, goes through the process of using the 14 information in the message that it received to -- what 15 were the steps? I don't remember the four steps right 16 now, into the arbitration, starts off with -- I don't 17 remember the four steps. 18 Anyway, it goes through those four steps, 19 gets the resulting offer that's going to go out, and 20 remember that the -- that offer is communicated back 21 into the client. 22 Q. So, in that scenario, what's the operation that 23 RT Server automatically initiates? 24 A. The -- well, ultimately, the operation that 25 it's going to initiate is to -- is to get the RT Client</p>
Page 155	Page 157
<p>1 "recognizing." 2 Q. But I think as you said before, the system 3 doesn't just get this information, it always has to do 4 something, is that right? 5 A. Not bad characterization, but yes, the -- there 6 is work involved in doing the inference that we're 7 talking about. It takes -- it takes logical operations 8 using logical rules to get to the end of it. 9 Q. The next claim element is automatically 10 initiating an operation in one or more particular 11 subsystems of the computer to facilitate a new action 12 based on the inferred context. 13 A. So you're at page 21, is that correct? 14 Q. Page 21 or 22 of your report. 15 A. Okay. 16 Q. What's the difference between an operation and 17 an action? 18 A. What is the difference between an operation and 19 an action, as used in this phrase, I take it? 20 Q. Yes. 21 A. Okay. Let me check back a second. Did I 22 include -- yes. As the claim is written, I don't think 23 there's a necessary difference or distinction between 24 them. 25 Q. You don't think there is a necessary --</p>	<p>1 the message, the return message, which causes the -- 2 causes the RT Client to operate. 3 Q. Could you say that again? I'm not sure I 4 follow. 5 A. Yeah. After doing all that the RT Server does, 6 it then packages up a return message to the RT Client, 7 which causes the operation of the RT Client. 8 Q. So what's the operation? 9 A. The RT Client receives a message and starts to 10 do whatever the message -- you know, it has to go in, 11 unpack the message, deal with what's going on, and 12 ultimately, then, the action that we're talking about is 13 that that display, either on the web page or on the 14 operator's console that is then used to move the 15 transaction along. 16 Q. That action then is external to IA, is that 17 right? 18 A. No. Well, remember, we talked about the 19 proxies for these things is that if you want to slice it 20 down that thinly, then the action that the RT Client 21 takes is, ultimately, to deliver whatever package of 22 information is going to be displayed on the screen, 23 delivers that to the system in which it's embedded, 24 okay? And that action is the action that facilitates 25 the sales process. The operation leading up to that is</p>

<p style="text-align: right;">Page 158</p> <p>1 the operation that makes it happen.</p> <p>2 Q. Okay. So, RT Server automatically initiates an</p> <p>3 operation in RT Client?</p> <p>4 A. Yes.</p> <p>5 Q. And what is that operation?</p> <p>6 A. The operation -- the operation, as I described</p> <p>7 it, is unpacking the message, deciding what to do with</p> <p>8 it, deciding what needs to be displayed, packaging up</p> <p>9 the display information for whatever system it's</p> <p>10 embedded in.</p> <p>11 Q. That's the operation.</p> <p>12 A. The operation is up to the point that it takes</p> <p>13 the action of interacting with the next system.</p> <p>14 Q. Okay. So, the operation is RT Server doing all</p> <p>15 the steps, unpacking the information, parsing it through</p> <p>16 RT miner, and then repackaging the offer message?</p> <p>17 A. No.</p> <p>18 MR. SPANGLER: Objection, form.</p> <p>19 Q. (By Mr. Dion) Is that right?</p> <p>20 A. No.</p> <p>21 Q. Okay. I think maybe we're not on the same</p> <p>22 page --</p> <p>23 A. Perhaps so.</p> <p>24 Q. -- so let's try to start that over. So, if you</p> <p>25 could explain to me again, then, what the operation is.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. -- that's facilitated is RT Client passing the</p> <p>2 offers to the other system.</p> <p>3 A. Yes.</p> <p>4 Q. Is that right? Doesn't RT Client do that in</p> <p>5 exactly the same way every time, regardless of what</p> <p>6 particular offers are contained within that set of</p> <p>7 information?</p> <p>8 MR. SPANGLER: Objection, form.</p> <p>9 A. No.</p> <p>10 Q. Why not?</p> <p>11 A. Remember what the action is. What is the</p> <p>12 action? The action is transmitting a particular package</p> <p>13 of information to the embedded system -- to the system</p> <p>14 to which it's embedded. That package of information is</p> <p>15 going to vary depending on what the context was that</p> <p>16 started off this whole thing.</p> <p>17 Q. The content of the package will vary depending</p> <p>18 on the context. Is that -- am I understanding</p> <p>19 correctly?</p> <p>20 A. Right.</p> <p>21 Q. But the action that RT Client carries out,</p> <p>22 which is passing the information along, is that action</p> <p>23 different --</p> <p>24 A. Yes.</p> <p>25 Q. -- if the content is different?</p>
<p style="text-align: right;">Page 159</p> <p>1 A. The operation is -- takes place in RT Client.</p> <p>2 Q. Okay.</p> <p>3 A. Not in RT Server.</p> <p>4 Q. Okay.</p> <p>5 A. RT Client receives the response from RT Server.</p> <p>6 Q. Okay.</p> <p>7 A. Okay? RT client has to do some of what RT</p> <p>8 Server is. That is, it gets a response back, it's got</p> <p>9 to break it apart, see what's in there, what am I</p> <p>10 supposed to do with it?</p> <p>11 And that operation results, ultimately, in</p> <p>12 the creation of a package of information that needs to</p> <p>13 be communicated out to the web page through the -- to</p> <p>14 the operator. And once RT Client has done that work,</p> <p>15 then the action that it takes is to pass that</p> <p>16 information along to whatever system it's embedded in.</p> <p>17 Q. How is that action based on the inferred</p> <p>18 context?</p> <p>19 A. Well, once again, the inferred context is part</p> <p>20 of the process that goes through this whole thing. It</p> <p>21 informs what's put into the response message. It's part</p> <p>22 of what goes into creating that. So, yes, it's all</p> <p>23 based on that.</p> <p>24 Q. I think you said the new action --</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Yes.</p> <p>2 MR. SPANGLER: Objection, form.</p> <p>3 Q. (By Mr. Dion) Why?</p> <p>4 A. I don't know how to answer that question.</p> <p>5 Q. Well, if we were talking about a real world</p> <p>6 sales process, and I was talking about an action, and</p> <p>7 the action was delivering the package to the customer.</p> <p>8 A. Right.</p> <p>9 Q. And I used a delivery service. I used FedEx,</p> <p>10 and you're my customer, and every time you place an</p> <p>11 order, I ship you a package.</p> <p>12 A. Right.</p> <p>13 Q. Does FedEx deliver you that package differently</p> <p>14 depending on what's inside?</p> <p>15 A. Sometimes, yes.</p> <p>16 Q. How is that?</p> <p>17 A. It's fragile, it's heavy, it's a different</p> <p>18 process each time.</p> <p>19 Q. Do the different offers -- the package of</p> <p>20 information containing offers that RT Server passes to</p> <p>21 RT Client, do they look different to RT Server,</p> <p>22 depending on the content -- excuse me. Do they look</p> <p>23 different to RT Client depending on the content?</p> <p>24 MR. SPANGLER: Objection, form.</p> <p>25 A. Well, in some respect, they have to, yes.</p>

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<p>1 Q. How's that?</p> <p>2 A. One piece of -- one return message says, you</p> <p>3 know, put up a single statement. Another return message</p> <p>4 says, put up, you know, the four -- the four</p> <p>5 opportunities to mollify this complaining customer.</p> <p>6 Another one says, you know, turn the following fields on</p> <p>7 or off. I mean, they're very different types of</p> <p>8 packages that it's dealing with.</p> <p>9 Q. And is the process that RT Client uses to pass</p> <p>10 that information to the other system different,</p> <p>11 depending on the content?</p> <p>12 A. Well, it's passing different information. The</p> <p>13 process is different, yes.</p> <p>14 Q. I understand it's passing different</p> <p>15 information, but is the process different?</p> <p>16 A. Yes.</p> <p>17 Q. So how about this, if I send you an e-mail, is</p> <p>18 the process of the e-mail getting from me to you</p> <p>19 different, depending on the content of the e-mail?</p> <p>20 A. I don't know.</p> <p>21 MR. SPANGLER: Objection, form.</p> <p>22 Q. (By Mr. Dion) Do you think it is?</p> <p>23 A. Again, I just don't know. I don't have an</p> <p>24 answer for that question.</p> <p>25 Q. How does RT Server automatically initiate that</p>	<p>1 it's done relative to this particular transaction, is</p> <p>2 that right?</p> <p>3 MR. SPANGLER: Objection, form.</p> <p>4 A. I think as long as the transmission's</p> <p>5 successful, yes, I think that's true.</p> <p>6 Q. Does RT Server check to see if the transmission</p> <p>7 is successful?</p> <p>8 A. Well, there's protocols going underneath it.</p> <p>9 Remember, it's an http transmission, so -- but I don't</p> <p>10 think that RT Server itself has to check to see whether</p> <p>11 it happens, but I think if it fails, there will be an</p> <p>12 event caused on the RT Server side. That may be too</p> <p>13 much speculation. I don't really know that for sure.</p> <p>14 Q. But in your view, that act of transmitting that</p> <p>15 data from RT Server, that's automatically initiating the</p> <p>16 operation in RT Client?</p> <p>17 MR. SPANGLER: Objection, form.</p> <p>18 A. Yes.</p> <p>19 Q. Okay. There are a number of the dependent</p> <p>20 claims that specify -- a system is cited in Claim 1,</p> <p>21 wherein the plurality of subsystems comprises, and then</p> <p>22 they would further specify two different subsystems.</p> <p>23 A. Okay.</p> <p>24 Q. You familiar with those? Claim 5 has an</p> <p>25 example of that form. Do you see what I'm --</p>
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<p>1 operation in RT Client?</p> <p>2 A. How does it automatically do it? There's</p> <p>3 nobody involved.</p> <p>4 Q. Doesn't RT Server just send the information out</p> <p>5 and then it's -- does it do anything after it sends the</p> <p>6 information over the connection to RT Client?</p> <p>7 A. Well, I'm sure it's doing many other things</p> <p>8 with respect to that particular transaction. I don't</p> <p>9 recall anything else that it has to do with respect to</p> <p>10 that transaction.</p> <p>11 Q. So the operation in RT Client happens because</p> <p>12 of the receipt of the data, is that right?</p> <p>13 MR. SPANGLER: Objection, form.</p> <p>14 A. Yes.</p> <p>15 Q. Does RT Client care where that information came</p> <p>16 from?</p> <p>17 MR. SPANGLER: Objection, form.</p> <p>18 A. I'm not sure that question makes sense. I'm</p> <p>19 not sure anybody else communicates with RT Client.</p> <p>20 Q. Does RT Server have any involvement -- does</p> <p>21 RT -- excuse me. Let me start over. RT Server passes</p> <p>22 that information to RT Client over a communications</p> <p>23 channel, is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Once RT Server puts that information out there,</p>	<p>1 A. I see Claim 5, yes.</p> <p>2 Q. So, for instance, Claim 5 has a system as</p> <p>3 recited in Claim 1 wherein the plurality of subsystems</p> <p>4 comprises, then it says, a time with customer subsystem</p> <p>5 and also a lead generation subsystem. Do you see that?</p> <p>6 A. I don't see the word "also".</p> <p>7 Q. Okay. Fair enough. A time with customer</p> <p>8 subsystem and a lead generation subsystem.</p> <p>9 A. Yes.</p> <p>10 Q. Do you understand these claims to require one</p> <p>11 subsystem within the system that performs both of these</p> <p>12 functions?</p> <p>13 MR. SPANGLER: Objection, form.</p> <p>14 A. No.</p> <p>15 Q. Do you understand these claims to require two</p> <p>16 separate subsystems within the system, one subsystem</p> <p>17 performing one function and a different subsystem</p> <p>18 performing another function?</p> <p>19 MR. SPANGLER: Objection, form.</p> <p>20 A. No.</p> <p>21 Q. So, in your opinion, either of those would</p> <p>22 satisfy these claims.</p> <p>23 MR. SPANGLER: Objection, form.</p> <p>24 A. Correct.</p> <p>25 Q. Claim 5, the element a, which is a time with</p>

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<p style="text-align: right;">Page 166</p> <p>1 customer subsystem configured to convert a lead to a 2 buying customer. And you state that IA documentation 3 describes operation of IA in connection with a call 4 center in which operators are directly in touch with 5 potential customers and in which the system is 6 configured to convert a lead into a buying customer so 7 as to close the sale. In that example, what is the 8 subsystem that satisfies the time with customer 9 subsystem limitation? 10 A. Whichever version of RT Client is operating 11 there. 12 Q. Then element b, which is a lead generation 13 subsystem configured to convert a name to a potential 14 customer. And on page 24, you state that -- the last 15 sentence of that paragraph, the RT Client, when used as 16 a front end for call centers or web applications -- 17 MR. SPANGLER: I'm sorry, Joel. Did you 18 say 24? 19 MR. DION: I'm sorry. 26. 20 MR. SPANGLER: 26, thank you. 21 Q. (By Mr. Dion) The RT Client, when used as a 22 front end for call centers or web applications, is a 23 lead generation system configured to convert a name to a 24 potential customer. Is it your understanding that RT 25 Client can be used as a front end for call centers or</p>	<p style="text-align: right;">Page 168</p> <p>1 circumstance, it infringes the claim, yes. 2 Q. In the circumstance where RT Client is embedded 3 into another system? 4 A. Yes. 5 Q. Would that also be true for the element a of 6 Claim 5, the time with customer subsystem? 7 A. Yes. 8 Q. Claim 6, element b is an order management 9 subsystem configured to convert the sale, such that a 10 product or service delivered matches a product or 11 service sold. And on the top of page 28, you say, IA 12 integrated with order management subsystems. What order 13 management subsystems do you understand IA integrated 14 with? 15 A. Would be the ones referred to in the reference 16 here. I don't remember them by name. 17 Q. Would it be the same situation here, where IA 18 only meets this limitation when it is, in fact, 19 integrated with one of these other order management 20 systems? 21 MR. SPANGLER: Objection, form. 22 A. I'm a little bit -- well, I don't quite 23 remember exactly what this refers to, so if we look at 24 this, it may tell us, but I don't remember. 25 Q. Do you understand that Interaction Adviser</p>
<p style="text-align: right;">Page 167</p> <p>1 web applications? 2 A. Yes. Well, it's part of that front end, but 3 it's configured to accomplish that purpose. 4 Q. When you say it's part of that front end, what 5 do you mean? 6 A. Well, we've talked about it before. It's an 7 embedded system. 8 Q. So, does RT Client -- is RT Client a lead 9 generation system configured to convert a name to a 10 potential sale, if it's not embedded into some other 11 system? 12 A. I don't know how RT Client operates stand- 13 alone. I'm not sure. 14 Q. So, is your opinion here, then, that RT Client, 15 when embedded with some other system, satisfies this 16 element? 17 A. RT Client, when it's operating, as I understand 18 it operates, yes. 19 Q. So, then, is it possible for Interaction 20 Adviser by itself to infringe Claim 5? 21 A. Yes. 22 Q. You just said that it needs -- RT Client needs 23 to be embedded into some other system in order to meet 24 this limitation. 25 A. Fair enough. But nevertheless, it -- in that</p>	<p style="text-align: right;">Page 169</p> <p>1 standing alone has an order management subsystem? 2 A. I don't recall that, no. 3 Q. Claim 7, again, element b, it's a customer 4 retention subsystem configured to convert an existing 5 customer into a lead so as to generate repeat sales. 6 And further down the page -- I'm sorry, page 29 -- you 7 say, "IA includes a customer retention subsystem." What 8 subsystem is that? 9 A. It would be -- I believe that this refers to RT 10 Client. 11 Q. Would this, again, require that RT Client be 12 embedded with some other system? 13 A. I'm not sure that it's necessary, but that was 14 the way I was looking at it here. 15 Q. Claim 8, element b. This is on page 31. And 16 this calls out a self-management subsystem configured to 17 assist a salesperson in managing sales information. And 18 then further down that page you say that "the RT Client 19 subsystems when used to link call centers to RT Server 20 are self-management subsystems." So is this, again, the 21 same situation, where IA meets this limitation, so long 22 as RT Client is embedded into some other system? 23 A. Yes. 24 Q. Claim 20, and it starts on page 35 of your 25 report. Do you understand Claim 20 to require a</p>

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<p style="text-align: right;">Page 170</p> <p>1 plurality of subsystems configured to facilitate a phase 2 of the sales process? 3 A. You're asking me whether I believe that the 4 preamble to the claim is a limitation? 5 Q. I am. 6 A. My understanding, I believe, is -- well, 7 actually, I don't know whether the preamble is a 8 limitation on this case or not. 9 Q. For purposes of your analysis, you assumed that 10 it was and looked for those elements? 11 A. Correct. 12 MR. SPANGLER: Objection, form. 13 Q. (By Mr. Dion) I think you gave the same answer 14 before for the other claims, is that right? You don't 15 know, but you tried to identify the elements in the 16 preamble anyway. 17 MR. SPANGLER: Objection, form. 18 A. With respect to the preamble, yes. You said 19 "other claims." I think the only other independent 20 claim we've dealt with was one, wasn't it? 21 Q. Okay. Claim 42, which is on page 49 of your 22 report. I guess this would also apply somewhat to Claim 23 41. Both 41 and 42 require an expert system? 24 A. Yes. 25 Q. What do you understand an expert system to be?</p>	<p style="text-align: right;">Page 172</p> <p>1 that those rules change. 2 Q. How do they change? 3 A. They change in that they give different results 4 based on the history of the system. 5 Q. How do you know that that's a change to the 6 rules, rather than just a different result based on 7 applying the same rules to a different set of data? 8 MR. SPANGLER: Objection, form. 9 A. Well, the -- let's see. Several places -- 10 well, okay. Let's just read through these examples 11 here. 12 Q. Okay. 13 A. If you take the second example, on page 50, it 14 says, "the SSA Inbound Marketing approaches customer 15 segmentation and campaign execution differently from 16 this standard -- referring to a previous technology -- 17 from this standard business practice by making decisions 18 in a more automated fashion. These decisions are based 19 on SSA Inbound Marketing Real-Time Miner technology, and 20 can replace many hard coded targeting rules." 21 What they're identifying is the Inbound 22 Marketing Real-Time Miner technology is this combination 23 of the code and the rules set and some of the data that 24 it works with all goes together to make a set of rules 25 that mean that you don't have to reprogram the system</p>
<p style="text-align: right;">Page 171</p> <p>1 A. Expert system, as construed here, is a software 2 program operating on a set of rules which can be 3 automatically updated based upon successful sales 4 approaches. 5 Q. What do you understand that to mean? 6 A. I understand it to mean that the -- that the 7 rules set adapts as the system operates. 8 Q. And you've identified here RT miner and/or 9 recommender as the expert system, is that right? 10 A. Yes. 11 Q. How do you understand that RT miner has rules 12 that are automatically updated based on successful sales 13 approaches? 14 A. I've got references in here. 15 MR. SPANGLER: Objection, form. 16 A. Is there any particular one that you wanted to 17 talk about, or you want me to just read through them? 18 Q. Well, what's your understanding of how RT miner 19 functions? 20 A. My understanding of how RT Miner functions is 21 that you have the -- that you have the RT Miner code and 22 that you then have a set of rules that go with it that 23 you define and that those rules are implemented partly 24 in data that's stored on the system, and that as the -- 25 as the system operates, the effect of using those rules,</p>	<p style="text-align: right;">Page 173</p> <p>1 all the time, that you can actually get a different 2 application, you can get a different set of -- 3 functional set of rules because it accumulates or 4 remembers the events, the results of some of the sales 5 operations. 6 Q. You said the code and then the rules set? 7 A. Yeah. The code and the rules set. 8 Q. What's the distinction between the code and the 9 rules set? 10 A. I think the code is the C++ code we've been 11 talking about, and the rules set are the Real-Time Miner 12 rules that were discussed, also. 13 Q. So, the code is the C++ code for what? 14 A. For the Real-Time Miners. 15 Q. Okay. And then the Real-Time Miner rules are 16 separate from the code? 17 A. Yes. 18 Q. Is the code also rules? 19 MR. SPANGLER: Objection, form. 20 A. The -- I guess in some respect, yes. 21 Q. Do those rules change? 22 A. No. Not in the sense that's being talked about 23 here, no. 24 Q. So, what are the then -- just call the code the 25 code, whether it's rules or not.</p>

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1 A. Right.
 2 Q. What is then the rules set?
 3 A. I'll have to go back and look at their
 4 example -- some examples. Remember, I couldn't get to
 5 those -- to those files, but the rules are described on
 6 some of the documentation. And you -- well, the
 7 Real-Time Miner rules and the -- again, I can't tell you
 8 exactly what's in any of them right now, but they have
 9 several settings in them that adapt to the sales
 10 transactions, sales operations, offers, acceptances that
 11 run back and forth through the system.
 12 Q. What do you mean by they adapt to the
 13 transactions?
 14 A. Some of their internals change.
 15 Q. So, would the internals of the rules change?
 16 A. Yes.
 17 Q. What's your basis for understanding that they
 18 change?
 19 A. Well, reading through the documentation, they
 20 talk about the fact that the rules record the offers and
 21 acceptances and they change the way they apply,
 22 depending on how many offers are accepted according to
 23 what -- how many offers are accepted within certain
 24 profiles or within certain -- within some of the
 25 campaigns.

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1 Q. Couldn't that -- the way that that process is
 2 described in the materials, couldn't that same result
 3 also be achieved by having a fixed set of rules, and
 4 wouldn't the output still change as the data, the input
 5 data changes?
 6 MR. SPANGLER: Objection, form.
 7 A. You could achieve something like the same
 8 effect, I believe, yes.
 9 Q. So, if Real-Time Miner just had one algorithm
 10 that it applied to everything, as you had more data
 11 accumulated to go into that algorithm, you would get
 12 different results coming out, is that right?
 13 MR. SPANGLER: Objection, form.
 14 A. You could do that, yes.
 15 Q. In the situation we're talking about, as you
 16 accumulated more information about what offers were
 17 accepted and what type of people they were accepted by,
 18 you might get better targeting of your offers out even
 19 without changing the rules, isn't that probable?
 20 MR. SPANGLER: Objection, form.
 21 A. There are ways to do that, yes.
 22 Q. How do you know that Real-Time Miner doesn't do
 23 it that way?
 24 A. That's not the way it talks about it. That's
 25 not the way that SSA talks about it.

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1 Q. Okay. Let's maybe keep going through and see
 2 where we can see that at. We talked about this second
 3 citation here, on page 50. So, what in there says that
 4 this is done by changing the rules, rather than by my
 5 suggestion, that it's just more data in gets better
 6 results out?
 7 A. I think that the description of Real-Time Miner
 8 technology that replaces hard coded targeting rules.
 9 Q. What makes something hard coded?
 10 A. What?
 11 Q. What would make something hard coded?
 12 A. Just what it sounds like. It's captured in the
 13 source code of the system.
 14 Q. What else on page 50?
 15 A. Well, each one of these statements is here
 16 because it supports that proposition.
 17 Q. Okay. Can you explain to me how, though, if we
 18 start at the top and work our way down?
 19 A. Okay. Sure. The system generated multi-row
 20 profile, which includes all data available from
 21 OfferTracker. This data can be used to create complex
 22 offer targeting rules, which are not possible through
 23 the TargetingHistory Profile.
 24 The fact that you have this system set up
 25 to create complex offer targeting rules off of the data

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1 collected through the OfferTracker indicates to me that
 2 the rules are changing as this profile was built.
 3 Q. Well, it says the profile system generated,
 4 right?
 5 A. Right.
 6 Q. Then it says that the profile can be used to
 7 create complex offer targeting rules. Does it say that
 8 the system does that?
 9 A. I believe that's the implication here, yes.
 10 Q. Is that within the Real-Time Miner?
 11 A. I don't know whether that's within the
 12 Real-Time Miner, the OfferTracker.
 13 Q. Is it within the recommender?
 14 A. And, again, I don't know.
 15 Q. Okay. So, to the extent this suggests that the
 16 system has changed rules on its own because we don't
 17 really know if that refers to Real-Time Miner doing it
 18 or Recommender doing it, is that right?
 19 MR. SPANGLER: Objection, form.
 20 A. At this point, no.
 21 Q. And then we already talked about the second
 22 item here. I think one other question about that.
 23 Where it says that the system or the technology can
 24 replace hard coded targeting rules, what are they being
 25 replaced with?

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<p style="text-align: right;">Page 178</p> <p>1 A. They were being replaced with this Inbound 2 Marketing Real-Time Miner technology, which I believe is 3 the combination of the Real-Time Miners with the rules 4 set that you build in. 5 Q. Could it also be the technology the way I 6 described it? 7 MR. SPANGLER: Objection, form. 8 A. I don't know. I don't know. 9 Q. You would imagine, if somebody's trying to sell 10 something, they're going to want to suggest that it's 11 better than what you used to use, is that right? 12 A. Yes. 13 Q. So if we read this as a marketing piece, and 14 I'm not sure exactly where it came from but they're 15 saying that this Real-Time Miner technology can replace 16 many hard coded targeting rules. I don't read that to 17 preclude the system working the way I discussed it, do 18 you? 19 A. I didn't read it that way. I read it the way I 20 read it, yes. 21 Q. Then the next cite down. 22 A. The Intelligent Business Rules Designer is used 23 to create Intelligent Business Rules. Those rules are 24 used to route and dispatch work items to users and 25 groups.</p>	<p style="text-align: right;">Page 180</p> <p>1 themselves. 2 Q. So a purely rules-based system is a rules-based 3 system that doesn't modify itself? 4 MR. SPANGLER: Objection, form. 5 A. I believe that's what's intended for that 6 state, yes. 7 Q. What's your basis for that belief? 8 A. Reading it in context. 9 Q. Is self-learning analytics necessarily rules 10 that the system can update on its known? 11 MR. SPANGLER: Objection, form. 12 A. Not necessarily. 13 Q. What else could it be? 14 A. It could be something else. 15 Q. And then the last one, the next cite down. 16 A. "In contrast, Inbound Marketing only uses 17 business rules as conditions for the activation of 18 campaign and the qualification of particular offers. 19 Since the analytics are self-learning, each interaction 20 helps refine the model and offer targeting gets better 21 and better." 22 Q. So, is it the same thing here, that self- 23 learning analytics? 24 A. The self-learning analytics, yes. 25 Q. Again, that's not necessarily rules that are</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. What's the Intelligent Business Rules Designer? 2 A. I don't remember. 3 Q. Is it part of Real-Time Miner? 4 A. I don't think so. 5 Q. Is it part of Recommender? 6 A. No, I don't believe so. 7 Q. Who uses it to create Intelligent Business 8 Rules? 9 A. I don't remember. 10 MR. SPANGLER: Objection, form. 11 Q. (By Mr. Dion) Then the next one down. 12 A. "Unlike purely rules-based or collaborative 13 filtering approaches, Inbound Marketing provides a rich 14 set of technologies that enable you to combine the best 15 of rules-based systems, self-learning analytics and 16 offer arbitration in a seamless manner." 17 Q. And what does that mean to you? 18 A. In particular, the phrase "self-learning 19 analytics" indicates processes that are adapting as the 20 information flow goes through it. 21 Q. Doesn't it also suggest that these are unlike 22 rules-based systems? 23 MR. SPANGLER: Objection, form. 24 A. Unlike purely rules-based systems. That is, 25 rules-based systems that don't adapt or don't modify</p>	<p style="text-align: right;">Page 181</p> <p>1 updated by the system? 2 A. The self-learning analytics are, I believe, 3 part of the rules set that goes in with the Real-Time 4 system, yes. 5 Q. When you talk about the rules set, again, 6 that's the set of files that you weren't able to review? 7 A. Not. Not just that. I don't know where else 8 it is, but I'm just saying that I wasn't able to see 9 some files that I wanted to see. I didn't characterize 10 them as the sole locus of the information. 11 Q. Did you find somewhere else where this rules 12 set resides? 13 A. I did not. 14 Q. But you looked for it in other places? 15 A. I did. 16 Q. Is it possible that RTM just doesn't use a 17 rules set like that? 18 A. I don't believe so. 19 Q. Why don't you believe so? 20 A. Because of the documentation that I read. 21 Q. But were you ever able to confirm within the 22 source code that the product is consistent with the 23 documentation that you read? 24 A. It seemed to me to be, yes. The reactions of 25 the system to -- it goes back here somewhere and is</p>

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<p style="text-align: right;">Page 182</p> <p>1 effectively a black box. I can't see what's going on 2 there. But what comes back looks to me like it's 3 working the way that I've described. 4 Q. Can you explain what you mean by that? 5 A. You can see the effects of the return 6 information that's coming back to the system, and it 7 matches what's being described in the documentation. 8 Q. And you're talking about, when you say you saw 9 this or you've seen this, where exactly? Do you mean in 10 the source code or in using the program? 11 A. In the source code. 12 Q. Where in the source code did you see that, if 13 you recall? 14 A. I can't tell you exactly where, but it's in the 15 structure of the objects that are returned back from the 16 Real-Time Miner operations. 17 Q. Returned back from Real-Time Miner to RT 18 Server? 19 A. To the RT Server. 20 Q. When you say it was a black box, did you have 21 access to the code for Real-Time Miner? 22 A. Yes. 23 Q. Were you not able to review it and I guess see 24 what was going on inside that black box? 25 A. Well, I'm not saying that the RT Miner itself</p>	<p style="text-align: right;">Page 184</p> <p>1 know -- do you recall what file or files you looked at? 2 Do you recall what -- you know -- 3 MR. SPANGLER: Objection, form. 4 A. Hang on. Yes, identified on page 17, the 5 DmEngines area is where the various engines are. And I 6 believe at the top of the page, third line, identified 7 the Mdap engine as the RT Miner. 8 Q. Do you recall what specifically you saw within 9 the Mdap engine that you felt was consistent with your 10 view of how the RT Miner functions? 11 A. You mean a particular line of code or 12 particular procedure or something like that? No. 13 Q. Okay. What's your basis for saying that the 14 Recommender operates on a set of rules which can be 15 automatically updated? 16 A. I don't recall. 17 Q. Do you still believe that to be accurate about 18 the Recommender? 19 A. Well, I don't recall the basis for doing that. 20 At the time I wrote this, I believed that to be true. I 21 can't give you an affirmation beyond the fact that when 22 I wrote it, I thought it was true. 23 Q. Do any of these, the citations that we looked 24 at, refer to the Recommender? 25 A. No, they don't. Not by name.</p>
<p style="text-align: right;">Page 183</p> <p>1 was a black box. I could see most of what it was doing, 2 but I couldn't always see the content of the data that 3 it would be working on. And you can't always see how 4 it's changing because you don't have a functioning 5 system. 6 Q. The code that you looked at to make this 7 determination, is it referenced anywhere in your report? 8 A. Yes. 9 Q. Could you show me where that is? 10 A. Wherever I described the -- the last printed 11 page in the middle of the page, it says, "source code 12 made available by Infor at the Potter Minton law firm. 13 Q. Specifically, you know the code that relates to 14 the functionality of the Real-Time Miner that you 15 reviewed that supports your opinion that the 16 functionality is consistent with the documents you read? 17 A. The references that are here are the references 18 that are here. I used -- in that case, then, it's just 19 the documentation information that I believe was 20 supported by what I saw. 21 Q. And so that's the question. What is it that 22 you saw? 23 A. I saw the source code for the Real-Time Miner. 24 I don't know how more specific to make it at this point. 25 Q. Is there any way you can identify it? Do you</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. And the source code that we looked at, was 2 anything in there identified as the Recommender? I 3 shouldn't say the source code we looked at. The source 4 code we mentioned that was on, I believe, page 17 of the 5 report? 6 A. Let me see. I don't recall. I don't recall 7 whether the targeting in here refers to the Recommender, 8 I don't believe it does, but I don't remember. 9 Q. Outbound Marketing. What is, generally, your 10 understanding of what Outbound Marketing is? 11 A. Well, the Outbound Marketing system -- well, 12 first off, it's a very large system and the -- here. 13 Refer to this. 14 Q. And that's Exhibit 4? 15 A. This is Exhibit 4, yes. Pages 25, 26, 27 give 16 pictures of the Outbound Marketing system. 17 Q. What functionality does Outbound Marketing 18 provide for its customers? 19 MR. SPANGLER: Objection, form. 20 A. The Outbound Marketing does a great deal of 21 reporting and also does generation of some types of 22 campaign information that are used for doing -- well, 23 some types of campaign information. 24 Q. Does outbound Marketing implement campaigns? 25 A. Does it implement campaigns?</p>

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<p style="text-align: right;">Page 186</p> <p>1 Q. Yeah. Can it --</p> <p>2 MR. SPANGLER: Objection, form.</p> <p>3 A. I believe Outbound Marketing produces</p> <p>4 supporting materials for campaigns, things like lists</p> <p>5 and -- well, things like lists.</p> <p>6 Q. Lists of what, for example?</p> <p>7 A. Oh, I'm sorry. E-mail contacts, addresses,</p> <p>8 names and addresses, things like that.</p> <p>9 Q. Okay. So if an offer has certain criteria that</p> <p>10 you have to satisfy in order to get that offer extended</p> <p>11 to you, Outbound Marketing would go through the</p> <p>12 population to determine which customers meet that</p> <p>13 criteria and then generate a list?</p> <p>14 MR. SPANGLER: Objection, form.</p> <p>15 A. If you have a campaign definition, yes, you</p> <p>16 can -- I believe you get a list that is appropriate to</p> <p>17 the offer in the population that you've identified for</p> <p>18 that campaign.</p> <p>19 Q. Is there a difference between marketing and</p> <p>20 sales?</p> <p>21 A. Yes.</p> <p>22 Q. What do you think that difference is?</p> <p>23 A. Marketing is generally done with the object of</p> <p>24 generating sales by setting up a good environment for</p> <p>25 them.</p>	<p style="text-align: right;">Page 188</p> <p>1 supports it by providing direct material that can be</p> <p>2 used in the campaigns. In general, marketing tends to</p> <p>3 support sales.</p> <p>4 Q. But marketing is different than sales.</p> <p>5 A. Again, those things are commonly classified</p> <p>6 differently. There's no hard boundary between them.</p> <p>7 And, like I said, although Outbound Marketing is self-</p> <p>8 described as a marketing system, it qualifies as a sales</p> <p>9 system, according to the description in the patent.</p> <p>10 Q. So, any system that meets the elements of these</p> <p>11 claims would necessarily, then, be a sales system?</p> <p>12 MR. SPANGLER: Objection, form.</p> <p>13 A. I'm not sure that the statement is that broad.</p> <p>14 All I was saying was that in this instance, looking at</p> <p>15 this stuff and looking at the patent, this looks like a</p> <p>16 sales system, as it's described in the patent.</p> <p>17 Q. How is a sales system described in the patent?</p> <p>18 A. I don't know. Give me the spec, and let's go</p> <p>19 to work.</p> <p>20 (DEPOSITION EXHIBIT 3 MARKED.)</p> <p>21 A. Okay. Why don't we start with Figure 4 in the</p> <p>22 patent?</p> <p>23 Q. We marked that as Exhibit 3, is that right?</p> <p>24 A. It's marked as Exhibit 3, yes. So, we start</p> <p>25 with Figure 4, and then turn to the description about</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. Is Outbound Marketing a sales system or</p> <p>2 marketing system?</p> <p>3 A. It's -- for purposes of the patent, it's a</p> <p>4 sales system.</p> <p>5 Q. Why is that?</p> <p>6 A. Because it does the things that are described</p> <p>7 in the claims.</p> <p>8 Q. What do you mean by "does the things that are</p> <p>9 described in the claims"?</p> <p>10 A. Well, it's a system for sales; that is, it</p> <p>11 supports and promotes sales, and it meets all of the</p> <p>12 other requirements of the claims.</p> <p>13 Q. Which requirements of the claims -- strike</p> <p>14 that.</p> <p>15 How, in your view, does Outbound Marketing</p> <p>16 facilitate a sales process?</p> <p>17 A. Well, at a very fundamental level, it -- for</p> <p>18 instance, let's go back to what we were talking about</p> <p>19 before, just generating lists or generating the types of</p> <p>20 reports that are discussed in the documentation, where</p> <p>21 the sales performance is presented for evaluation to</p> <p>22 direct people on how to modify the campaigns that</p> <p>23 they're working on.</p> <p>24 So, it supports it by providing information</p> <p>25 that is used to build the campaigns with. It also</p>	<p style="text-align: right;">Page 189</p> <p>1 Figure 4 on the bottom of Column 11 in the spec.</p> <p>2 Q. Okay.</p> <p>3 A. The specification says that Figure 4 is</p> <p>4 intended mostly for the purpose of identifying some of</p> <p>5 the subsystems that are described in other claims, but</p> <p>6 the implication here is that Figure 4, with the event</p> <p>7 manager, is at least part of a sales system.</p> <p>8 Q. Okay.</p> <p>9 A. Sales system includes presentations, life cycle</p> <p>10 costs, performance evaluation, competitive</p> <p>11 comparisons... and other, okay? That is, there's a very</p> <p>12 broad description here, a very broad implication about</p> <p>13 what goes into a sales system. If you want, we can do</p> <p>14 more examples out of here.</p> <p>15 Q. Well, let me ask you one other question. Would</p> <p>16 Outbound Marketing fit into one of these categories</p> <p>17 here?</p> <p>18 MR. SPANGLER: Objection, form.</p> <p>19 A. Does it -- is it a configurator? Is it a</p> <p>20 finance system? Is that what you're saying?</p> <p>21 Q. That's what I'm saying.</p> <p>22 A. No, I don't think so.</p> <p>23 Q. Okay. I don't know that we need to spend too</p> <p>24 much time going down this road.</p> <p>25 A. Okay.</p>

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<p style="text-align: right;">Page 190</p> <p>1 Q. So, Outbound Marketing. I'm looking at page 56 2 of your report. 3 A. Okay. 4 Q. Again, the first claim element, Claim 1 is that 5 it's "a plurality of subsystems configured to facilitate 6 one or more actions performed during at least one phase 7 of the sales process." You've identified campaign 8 management, sophisticated database management, 9 integrated OLAP and predictive analytics as a subsystem. 10 Is that accurate? 11 A. Yes. Those are among the subsystems I 12 identified. 13 Q. How do you know that each of those is a 14 subsystem? 15 A. Okay. If you go to page 21 of Exhibit 4. 16 Q. Okay. 17 A. That bottom section of the page begins, "you 18 can use Outbound Marketing applications to review, 19 analyze and act on information that resides in a 20 state-of-the-art data mart through a Web based 21 interface." Skip over a little bit, it says, "the 22 Outbound Marketing applications such as E.piphany 23 Insight and the Outbound Marketing give users the 24 following capabilities: Online analytical processing, 25 that's the OLAP, data mining, list management, campaign</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. And when it says "these powerful applications," 2 is it possible to also read it the way I do, that "these 3 powerful applications" refers back to E.piphany Insight 4 and Outbound Marking rather than to the capabilities? 5 MR. SPANGLER: Objection, form. 6 A. Yes, it is possible to read it that way. 7 Q. Did you review the OM source code? 8 A. Some. 9 Q. Did you review the OM source code to try and 10 determine whether or not these functionalities were 11 indeed applications? 12 A. I actually worked off of the documentation 13 here. I thought it was much closer to the patent 14 claims. 15 Q. You thought the documentation was much closer 16 to the patent claims than the source code? 17 A. No. Much closer to the patent claims than even 18 the documentation in IA. I thought this was a pretty 19 straight read. 20 Q. So, then, you didn't look at the source code to 21 confirm your reading of the documentation? 22 MR. SPANGLER: Objection, form. 23 A. I looked at some of the source code. I did not 24 pursue it to the extent that I did the IA. 25 Q. Do you recall, specifically, what source code</p>
<p style="text-align: right;">Page 191</p> <p>1 management." Says, "these powerful applications are 2 deployed through the Outbound Marketing server, an 3 application server that allows them to work together in 4 a tightly integrated fashion." 5 So, I believe that's the indicator here, 6 that these things are applications -- separable 7 applications within the system. 8 Q. Well, the way I read that it says, "Outbound 9 Marketing applications such as E.piphany Insight and the 10 Outbound Marketing give the users the following 11 capabilities." So, isn't E.piphany Insight and Outbound 12 Marketing that are identified there as the applications? 13 MR. SPANGLER: Objection, form. 14 A. I'm not sure that that's true. I understand 15 that reading. I'm not sure that's true. I think that 16 the data mining is an application. I think that list 17 management is an application. I think that campaign 18 management is an application. And I think that OLAP, 19 online analytical processing, is an application. 20 Q. You do or don't? 21 A. I do. 22 Q. But it merely says here that those are 23 capabilities, is that right? 24 A. It describes them as capabilities that are 25 presented by the applications, yes.</p>	<p style="text-align: right;">Page 193</p> <p>1 you looked at? 2 A. No. But we printed off a little bit of it 3 early on. I couldn't tell you the names of the stuff I 4 printed. 5 Q. Do you recall what the source code that you 6 looked at related to? 7 A. Actually, the Outbound Marketing system was 8 very large. We looked through -- it was six -- six very 9 large directories of source code. We looked through 10 it -- yeah, we looked at it. That's all I can tell you. 11 Q. Okay. So here where it says that "applications 12 such as Insight and Outbound Marketing give users the 13 following capabilities." 14 A. Right. 15 Q. You understand that to mean that those 16 capabilities are also applications. 17 A. I understand it to mean that those capabilities 18 are subsystems, is the way I identified them. 19 Q. What's the basis for saying that they're 20 subsystems? 21 A. They're very, very separable processes. 22 They -- I mean, these are -- I just think that they're 23 very clearly separate things. 24 Q. Would it be possible to write a single 25 application that had all of those capabilities?</p>

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1 A. Yes.
 2 Q. In your view, would that application still have
 3 four different subsystems?
 4 MR. SPANGLER: Objection, form.
 5 A. Not necessarily.
 6 Q. Why not?
 7 A. Just because I don't think you would
 8 necessarily have to do that. But remember, I did look
 9 at the source code, and this stuff is broken up into
 10 multiple subsystems, and I believe that those are
 11 properly identified as such.
 12 Q. What source code, specifically, demonstrates
 13 that each of these functionalities is a different
 14 subsystem?
 15 A. I don't have an answer for that.
 16 Q. Is it cited in your report?
 17 A. The source code?
 18 Q. The source code.
 19 A. Other than the general designation, no.
 20 Q. And is it cited in this Exhibit 4 somewhere?
 21 A. No.
 22 Q. Do you believe it to be among the source code
 23 that you printed out?
 24 A. It may be.
 25 Q. But you don't know that for sure right now?

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1 A. I don't know for sure.
 2 Q. So it's possible that within Outbound Marketing
 3 one or more -- more than one of these functionalities
 4 could be carried out by a single subsystem.
 5 MR. SPANGLER: Objection, form.
 6 A. It is theoretically possible. I do not believe
 7 that's true.
 8 Q. You don't believe it to be true. But -- okay.
 9 So, on your list, you have the campaign management,
 10 which I also see on this list, you have sophisticated
 11 database management, which I don't see on this list.
 12 A. Okay.
 13 Q. Is that one of these items?
 14 A. I'm sorry. It's not on that list, no.
 15 Q. It's not on this list?
 16 A. It's not on the list I just talked to you
 17 about, no.
 18 Q. So what's your basis, then, for saying that
 19 sophisticated database management is a subsystem?
 20 A. The -- if you go look at that -- pages 25, 6
 21 and 7 all describe the EpiCenter Data Mart, and
 22 there's -- I mean, the discussion of the EpiCenter Data
 23 Mart pervades all this system. That is part of the
 24 sophisticated database management that we're talking
 25 about there, and that's I believe clearly identifiable

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1 as a separate subsystem here.
 2 Q. Okay. And then, the OLAP?
 3 A. Right.
 4 Q. Is on this list. You have it as integrated
 5 OLAP. Is that just because that quote there comes from
 6 a different document?
 7 A. Right. The -- I think -- let's go back.
 8 You're right. The word "integrated" doesn't come off of
 9 that list. It's just OLAP there, and I don't --
 10 Q. Do you understand OLAP on this list and
 11 integrated OLAP on this list to be the same thing?
 12 A. Yes. I couldn't tell you how the word
 13 "integrated" got in there.
 14 Q. And then predictive analytics, which is on the
 15 list in your report, I don't see that anywhere here on
 16 this list.
 17 A. Right.
 18 Q. What's your basis for saying that predictive
 19 analytics is a subsystem?
 20 A. Again, it will be in here. It's discussed -- I
 21 just have to look and see, but it's -- hang on. I don't
 22 remember the source of that exact phrase, but the
 23 analytics are discussed on page 23.
 24 Q. Where on 23 do you see that?
 25 A. One, two, three, fourth button there. Here it

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1 uses the phrase "analytical calculations," but other
 2 places, they're called analytics.
 3 Q. And this list is -- says, "the Outbound
 4 Marketing server connects Outbound Marketing
 5 applications to the data mart. This application server
 6 performs the following tasks." And then that's listed
 7 as one of the tasks that the Outbound Marketing server
 8 performs. Do you agree with that?
 9 A. I believe that that statement actually refers
 10 to the invocation of these subsystems, that these are
 11 the tasks that are accomplished by using these
 12 subsystems.
 13 Q. What's your basis for saying that?
 14 A. Because I read the stuff.
 15 Q. You read what stuff, something besides this?
 16 A. This stuff. I believe that statement there
 17 actually says that.
 18 Q. So your understanding of "this application
 19 server performs the following tasks," you read that as
 20 this application server invokes certain subsystems to
 21 perform the following tasks?
 22 A. It says, the Outbound Marketing server connects
 23 Outbound Marketing applications to the data mart, okay?
 24 And it says it's an application server. That is, it's
 25 invoking these applications to perform these tasks. I

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<p style="text-align: right;">Page 198</p> <p>1 believe that's what it's saying. 2 Q. Okay. I want to go back to something you said 3 when we first started talking about Outbound Marketing. 4 You said that you looked at the documentation and 5 less -- I think less so at the source code as compared 6 to IA, because you felt the documentation for Outbound 7 Marketing matched more closely to the claim language 8 than the documentation for IA did? 9 A. Yes. 10 Q. Could you explain that a little bit? 11 A. I think the statement stands by itself. I 12 mean, this -- the descriptions used in the documentation 13 for Outbound Marketing are much more expressive, 14 directly to the level that the patent is drawn. The 15 language is very, very close to what's in here. The -- 16 it just reads straight on it. I mean, the -- it's a 17 very straightforward mapping from one to the other. 18 Q. And you didn't feel that was the case for IA. 19 A. Not as much. The IA system, it has the expert 20 system in it and, you know, it's -- it's a more complex 21 system. 22 Q. The list that we're looking at, the list on 23 page 57 of your report about subsystems and then the 24 couple of different lists we've looked at in the 25 exhibit --</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. There's both an Outbound Marketing server and 2 then an application server. 3 A. Right. 4 Q. Are those different? 5 A. Well, yeah, they show up as different items 6 here, yes. The J2EE application server, is that what 7 you're talking about? 8 Q. Uh-huh. 9 A. Yeah. 10 Q. I think when we were talking about some of the 11 functionalities, you had said that the OM server was an 12 application server to the Outbound Marketing 13 applications? 14 MR. SPANGLER: Objection, form. 15 A. Talking about -- I believe at the top of page 16 23. 17 Q. Yes. So, is that reference there to this 18 application server, is that referring to the Outbound 19 Marketing server? 20 A. I believe the Outbound Marketing server is 21 shown next to the application server. The J2EE 22 application server, is that what you're talking about? 23 Q. Uh-huh. 24 A. Yeah. 25 MR. DION: All right. We're due for</p>
<p style="text-align: right;">Page 199</p> <p>1 A. Right. 2 Q. -- did those come from marketing materials? 3 A. They may be from marketing materials. They may 4 be from documentation material. 5 Q. Did you see any architecture diagrams for 6 Outbound Marketing? 7 A. Architecture beyond what we looked at earlier, 8 the system description? 9 Q. Yeah. Anything beyond that? Well, we looked 10 at -- you're referring to page, 25, 26 and 27? 11 A. I'm sure I have others in here, but I'm not 12 sure what you're after. 13 Q. Any technical documentation from the 14 development side, rather than the customer side? 15 MR. SPANGLER: Objection, form. 16 A. Well, we have results of depositions that were 17 taken, factual depositions that relate to the programs 18 that were more technical. Some of the documents that 19 we're talking about are not just documents for marketing 20 professionals, but they're documents for people who are 21 installing the system or configuring the system, and 22 they're -- like I say, they're very good. 23 Q. If you look at page 25, 26 or 27, look at the 24 diagrams there. 25 A. Okay.</p>	<p style="text-align: right;">Page 201</p> <p>1 another break before we run out of tape. 2 VIDEOGRAPHER: The time is 3:49, we're off 3 the record. 4 (OFF THE RECORD FROM 3:49 TO 4:01 P.M.) 5 VIDEOGRAPHER: Time is 4:01, we're back on 6 the record. 7 Q. (By Mr. Dion) Going to change gears slightly 8 here. I wanted to ask you a few more questions about 9 the actual process you used to prepare the exhibits to 10 your report. 11 A. Okay. 12 Q. I believe I asked you earlier, but I'm going to 13 ask you again, just so it's fresh in my mind. Did you 14 have any role in preparing the infringement contentions 15 in this matter? 16 A. Talking about the preliminary infringement 17 contentions? 18 Q. Did you have any role in preparing the 19 preliminary infringement contentions? 20 A. I really don't remember. I did a lot of work 21 on the -- whatever it is -- the rework. I don't 22 remember how much I did, if I did any on the preliminary 23 infringement contentions. 24 MR. SPANGLER: I went back over and looked 25 at that stipulation. I'd like you to review it. I</p>

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<p style="text-align: right;">Page 202</p> <p>1 don't think anything we went into and did in generating 2 the report is discoverable or the exhibits attached 3 thereto. 4 MR. DION: I think we're entitled to know 5 the process used to generate his report and how much of 6 it is his own work product. I think you asked similar 7 questions of our experts without our objection, and I 8 don't read the stipulation to be that broad. I read it 9 to cover discovery of actual drafts, hard copies of 10 drafts, which I'm not asking him for, and communications 11 with the lawyer. 12 I'm not asking him about his communications 13 with you, I'm asking him about what he did. If we're 14 going to have an issue over this, I purposely did it 15 now, you know, at this time of day, before it got too 16 late, because if we're going to have an issue, we're 17 going to have to have a hotline call, because I think 18 we're entitled to this information. 19 MR. SPANGLER: Call them up. 20 MR. ZAHER: So we're clear, you're 21 objecting to him answering the question? 22 MR. SPANGLER: Let me hear the exact 23 question. I'm not going to let it go wide open. 24 MR. ZAHER: Let's see if we can work it 25 out --</p>	<p style="text-align: right;">Page 204</p> <p>1 A. I have worked with these documents in previous 2 versions, but I was asked to review the previous 3 versions. I believe that I contributed to changes in 4 them, but I don't know -- I don't know how much impact 5 that had on the documents. I just don't recall. 6 Q. How much work did you do on generating the 7 actual content that's in the exhibits to your report? 8 MR. SPANGLER: Hold on. Let me think about 9 that question. Shall not be subject to discovery upon 10 any drafts of the report, leading up to the draft of his 11 exhibits leading up to his report. 12 MR. DION: I'm not asking about the drafts. 13 I'm asking about the final ones that he served. 14 MR. SPANGLER: Yeah. I don't get how 15 that's different. So, you can ask about the final, but 16 not how he got to the final? That's how you're reading 17 the stipulation? You can ask how you got to the final 18 without asking -- let me rephrase that. The stipulation 19 says you can't get discovery on anything leading up to 20 the report, but you can find out about the final report? 21 MR. DION: What's the language of the 22 stipulation? 23 MR. SPANGLER: Testifying experts shall not 24 be subject to discovery, right? On any draft of the 25 report. That doesn't mean you don't get the drafts.</p>
<p style="text-align: right;">Page 203</p> <p>1 MR. SPANGLER: I've got the stip up. You 2 may want to pull the stip up, too, as we go through 3 this. 4 MR. ZAHER: Why don't you ask your 5 question, Joel? 6 Q. (By Mr. Dion) Did you have a role in preparing 7 the amended infringement contentions? 8 A. Yes. 9 MR. SPANGLER: Which ones? This is the 10 third set, I believe. You asked us to amend the first 11 time, then is the second set. So I want to clarify for 12 the record which one you're talking about. 13 Q. (By Mr. Dion) I guess let me ask you that. 14 You had a role in the most recent infringement 15 contentions that were served on Infor? 16 A. If you're talking about the exhibits to my 17 report, I had a role in preparing those. 18 Q. Is it your understanding that those are the 19 same as the most recent set of infringement contentions 20 that were served? 21 A. I don't know whether that's true. 22 Q. Did you have a role in preparing anything other 23 than the exhibits to your report? 24 A. Yes. 25 Q. What was that?</p>	<p style="text-align: right;">Page 205</p> <p>1 That means not subject to discovery on any drafts. 2 Discovery can be communications, anything else. And 3 such draft reports, notes, outlines or any other 4 writings leading up to a report in this litigation are 5 exempt from discovery. 6 In addition, all communications to and 7 from -- that obviously includes attorneys -- and you're 8 asking him what we told him to do or not do, a 9 testifying expert and all materials generated by a 10 testifying expert with respect to that person's work, 11 that includes the attorney's work, are exempt from 12 discovery unless relied upon by the expert in forming 13 any opinions in this litigation. His final report, what 14 he relied on in generating this, he cited all of it in 15 his Exhibit 2. 16 MR. DION: The fact is, if the attorneys, 17 and I don't know this to be the case, but if the 18 attorneys prepared those exhibits and gave them to him, 19 that's a substantial part of his report. If that's the 20 case -- 21 MR. SPANGLER: He's already testified that 22 that's not the case. 23 MR. DION: Well, he testified he had some 24 involvement. He didn't testify that he created them 25 entirely. He testified that the attorneys did some and</p>

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1 he did some.

2 MR. SPANGLER: And I'm not going to -- that
3 reveals what communications we had back and forth in the
4 drafts of reports and what each person did, and I'm not
5 going to let him answer that question.

6 MR. DION: If those documents were prepared
7 in large measure or primarily by attorneys and then
8 simply given to him and that represents the bulk of his
9 report, I think we have a basis to challenge his
10 testimony at trial for failure to comply with Rule 26,
11 and I think we're entitled to make inquiry into that.

12 MR. SPANGLER: You also need to read, one,
13 that doesn't get to the stipulation. Two, you might
14 want to pull up another e-mail that I can go to, in
15 response to the motion to strike, when you add the claim
16 charts for the first time on claims that you never
17 charted before. Let me pull that right up. Now, what
18 is it you want to do with the report? Under Rule 26,
19 what is it you want to do?

20 MR. DION: I want to explore who prepared
21 it.

22 MR. SPANGLER: I know, but you said at
23 trial what do you want to do?

24 MR. DION: I think that if the report was
25 not prepared by the expert, we have a basis to challenge

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1 Mr. Cole being offered as an expert, because if he
2 didn't prepare his report, he hasn't complied with his
3 obligations under Rule 26.

4 MR. SPANGLER: "Infor agrees that it will
5 not seek to strike Tipton Cole's report or SFA's
6 infringement contentions without prejudice to Infor's
7 ability to present and argue the evidence in conjunction
8 with dispositive and/or pretrial motions and at trial or
9 post trial."

10 You can fight the material in it, but you
11 can't move to strike his report or the contentions. You
12 agreed to that. I've got it right here. You agreed to
13 that because we had a motion to strike pending all your
14 dependent claims on invalid claim charts that you've
15 never done before. You remember this agreement?

16 MR. DION: I remember this agreement. I
17 don't remember it to suggest that we couldn't challenge
18 him on any basis whatsoever. It was related to the
19 amendments or the contentions.

20 MR. SPANGLER: You cannot strike his
21 report. You cannot even seek to strike his report or
22 the infringement contentions. That's what you agreed
23 to.

24 MR. ZAHER: Andrew, that agreement has only
25 to do with the subject matter there. You're reading it

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1 to read for any purpose, for any reason whatsoever?

2 That's not at all what the context of the purpose of
3 that e-mail, and we do not agree with that. That is not
4 our position. We are not going to take that position.

5 MR. SPANGLER: We have your stipulation on
6 what you get and what you don't get with respect to
7 experts. Again, language, you guys understood and
8 proposed, we negotiated and agreed to, and then you
9 guys, as a result of the motion to strike that you guys
10 wanted us to pull down, you agreed to this language,
11 also.

12 MR. ZAHER: It had nothing to do with these
13 questions. We're going to pose the questions.

14 MR. SPANGLER: I want to know all the
15 questions that he has, we'll go through them, because
16 the Court's going to want to know what the total
17 questions are, because he's not going to do a hotline
18 call, and then we do another one --

19 MR. ZAHER: On this last question, you're
20 instructing him not to answer.

21 MR. SPANGLER: Let me hear the question
22 again.

23 Q. (By Mr. Dion) What percentage of the substance
24 in the exhibits to your report you say that you
25 prepared, personally?

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1 MR. SPANGLER: Don't answer that, Tipton.
2 Let me think.

3 MR. ZAHER: You have no objection to that
4 question?

5 MR. SPANGLER: I said, let me think.

6 MR. ZAHER: Oh, I thought you said he could
7 answer.

8 MR. SPANGLER: Worded just like that, I
9 cannot let him answer. There's ways you could word it
10 differently where you could get some information, but as
11 it's currently written, the answer is no, I object.

12 MR. DION: Could you explain your basis for
13 objecting?

14 MR. SPANGLER: If you want to know how much
15 was drafted by someone other than him, that was not
16 under his direction and authority, you are welcome to
17 explore that.

18 MR. DION: Okay.

19 MR. SPANGLER: Okay? But just asking him
20 whether we worked as a team under his direction as our
21 testifying expert, that's covered by the stipulation.

22 MR. DION: Fair enough.

23 MR. SPANGLER: What was done by the
24 attorneys only? Fair enough.

25 Q. (By Mr. Dion) How much, approximately, of the

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<p style="text-align: right;">Page 210</p> <p>1 contents of the exhibits to your report would you say 2 was drafted by somebody other than you and not under 3 your direction or supervision? 4 A. None of it. 5 Q. Okay. 6 MR. ZAHER: Can we take a break? 7 MR. SPANGLER: Sure. 8 VIDEOGRAPHER: Time is 4:12, we're off the 9 record. 10 (OFF THE RECORD FROM 4:12 TO 4:15 P.M.) 11 VIDEOGRAPHER: The time is 4:15, we're back 12 on the record. 13 Q. (By Mr. Dion) So, moving back to Outbound 14 Marketing, so far, of the subsystems that you've 15 identified, we talked about the campaign management, 16 database management, the OLAP and predictive analytics. 17 I think you said those were some of the subsystems you 18 identified. Are there others? 19 A. Are there others? Oh, well, it was the 20 references here to the campaign execution and the 21 marketing management. 22 Q. Campaign execution and marketing management, 23 are those -- 24 A. Just referring to these documents here to 25 direct that.</p>	<p style="text-align: right;">Page 212</p> <p>1 sales process, along with these other systems. The 2 intention, I believe, was that the other systems were 3 phases of the sales process, but they're also subsystems 4 of the -- sorry. They are subsystems that perform 5 actions during a phase of the sales process. 6 Q. Okay. So campaign management obviously appears 7 on both lists. 8 A. Right. 9 Q. That's a subsystem and also a phase of the 10 sales process? 11 A. Yes. 12 Q. And then campaign execution, same thing, a 13 subsystem and also a phase of the sales process? 14 A. Correct. 15 Q. Marketing management, same thing? 16 A. Yes. And IA, again, probably shouldn't be 17 there, I think I -- 18 MR. SPANGLER: Joel, we need to take a 19 short break. 20 MR. DION: Okay. 21 VIDEOGRAPHER: Time is 4:19, we're off the 22 record. 23 (OFF THE RECORD FROM 4:19 TO 4:22 P.M.) 24 VIDEOGRAPHER: Time is 4:22, we're back on 25 the record.</p>
<p style="text-align: right;">Page 211</p> <p>1 Q. Okay. Do those documents identify additional 2 subsystems? 3 A. Let me read through it again and make sure. 4 I'm sorry. Campaign management's redundant. 5 Marketing -- 6 Q. Let me maybe short-circuit this. The way I 7 read this, that second sentence is that the subsystems 8 are configured to facilitate one or more actions 9 performed during at least one phase of the sales 10 process, including -- I read that "including" to be 11 referring to the phases of the sales process, and then 12 campaign management, campaign execution, marketing 13 management are being referenced as phases of the sales 14 process. Is my reading of that correct, or am I 15 misinterpreting what you meant there? 16 MR. SPANGLER: Objection, form. Can you 17 tell me what page real quick? 18 MR. DION: 57, at the bottom. 19 MR. SPANGLER: Okay. 20 A. Not very elegantly put. The campaign 21 management is identified as a subsystem in the first 22 part of this, where I'm identifying some of the 23 subsystems. 24 Q. Right. 25 A. And then it is identified as a phase of the</p>	<p style="text-align: right;">Page 213</p> <p>1 MR. SPANGLER: I have had a conversation 2 with my co-counsel, Mr. David Pridham, regarding the 3 last line of questioning, and we believe that that was 4 an attempt to violate both stipulations, and just want 5 to put you on notice that if you move to strike any or 6 all of Mr. Cole's report, we will be re-urging our 7 motion to strike. So, that's on the record. You can 8 continue, if you want, Joel. 9 Q. (By Mr. Dion) Okay. Again, we're talking 10 about Outbound Marketing and the element al. I think we 11 were just getting to the part here, you said there's a 12 reference to IA. I understand that to be Interaction 13 Adviser, is that correct? 14 A. Yes. 15 Q. I think you were saying that was perhaps in 16 error? 17 A. Out of place at this point, yes. 18 Q. That would perhaps be relative to your 19 allegations about IA and OM and they integrate? 20 A. Hang on for just a second here. 21 Q. Okay. 22 A. Yeah. That -- that, I think, is out of bounds 23 for this element. 24 Q. Okay. Now, the documents that are referenced 25 after campaign execution and marketing management, do</p>

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<p style="text-align: right;">Page 214</p> <p>1 they identify additional subsystems?</p> <p>2 A. I believe it identifies those systems.</p> <p>3 Q. Okay. So this paragraph here has the universe</p> <p>4 of subsystems that you've identified within Outbound</p> <p>5 Marketing?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. And you have identified as the event manager at</p> <p>8 Outbound Marketing the OM server, is that right?</p> <p>9 A. Correct.</p> <p>10 Q. These subsystems that you identified were the</p> <p>11 different features that you've identified that you say</p> <p>12 are also subsystems?</p> <p>13 A. I believe so.</p> <p>14 Q. Do you have an understanding of how Outbound</p> <p>15 Marketing carries out each of those tasks or</p> <p>16 functionalities?</p> <p>17 MR. SPANGLER: Objection, form.</p> <p>18 A. I think so, yes.</p> <p>19 Q. So, campaign management, do you believe that to</p> <p>20 be separate from the Outbound Marketing server?</p> <p>21 MR. SPANGLER: Objection, form.</p> <p>22 A. Again, we've had this discussion previously</p> <p>23 with the IA server, but yes, in the same way that I</p> <p>24 believe that IA Manager is separate from the Real-Time</p> <p>25 Server.</p>	<p style="text-align: right;">Page 216</p> <p>1 Outbound Marketing?</p> <p>2 A. Well, sort of. Actually, we could use that, it</p> <p>3 actually does serve here, because what it's showing here</p> <p>4 is that for each of the applications that runs here,</p> <p>5 they run out at the business user's level here on the</p> <p>6 Web pages, and each of the -- for each of the systems</p> <p>7 that these users are operating -- this actually works</p> <p>8 better.</p> <p>9 For each of the systems that these users</p> <p>10 are operating, they're all running through the Outbound</p> <p>11 Marketing server to get the appropriate data to do the</p> <p>12 proper data queries, and so forth, to serve those</p> <p>13 applications.</p> <p>14 Q. Okay. So, where -- and I understand it's</p> <p>15 obviously not a label on this chart, but if I were</p> <p>16 looking for the campaign management subsystem, where</p> <p>17 would that be on this diagram?</p> <p>18 A. That's why I was saying that -- I was actually</p> <p>19 doing the same thing, looking for something specific.</p> <p>20 But the campaign management is going to be performed --</p> <p>21 the operation of the -- that the end users perform is</p> <p>22 all done out at the business users level here on the Web</p> <p>23 pages. That -- the information for the Web pages goes</p> <p>24 through the Outbound Marketing server for resolution</p> <p>25 from the databases.</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. Do you know if OM server has any role in</p> <p>2 campaign management?</p> <p>3 A. Has any role in campaign management?</p> <p>4 Q. Yes.</p> <p>5 A. I'm not sure how to answer that exactly. I'm</p> <p>6 not sure how to answer that.</p> <p>7 Q. What parts of the Outbound Marketing system</p> <p>8 carry out the campaign management capability?</p> <p>9 A. Okay. Let me check in here a little bit. The</p> <p>10 Outbound Marketing server, I believe, sits between all</p> <p>11 of these -- all of these subsystems and helps to serve</p> <p>12 the -- all the data that's used to do the market -- you</p> <p>13 know, to do the marketing management reports, and so</p> <p>14 forth. All that runs through the Outbound Marketing</p> <p>15 server.</p> <p>16 Q. Okay. Which components of the system perform</p> <p>17 the campaign management function?</p> <p>18 A. The --</p> <p>19 Q. If I could ask you to turn to page 27.</p> <p>20 A. Sure.</p> <p>21 Q. I don't know if this will be helpful or not,</p> <p>22 but at the top there, there's a diagram that's labeled</p> <p>23 "Outbound Marketing Architecture." You see that?</p> <p>24 A. Right.</p> <p>25 Q. So that should be presumably all the pieces of</p>	<p style="text-align: right;">Page 217</p> <p>1 Q. Okay.</p> <p>2 A. And Outbound Marketing server then serves the</p> <p>3 answers for each of those applications back up through</p> <p>4 this. This is -- it's a generic description, but it</p> <p>5 serves for each of these applications.</p> <p>6 Q. So, I think you said that the information for</p> <p>7 the applications is -- comes from Outbound Marketing</p> <p>8 server?</p> <p>9 (MR. ZAHER LEAVES ROOM.)</p> <p>10 A. I'm sorry, the information --</p> <p>11 Q. For each of the different applications on the</p> <p>12 Web page comes from the Outbound Marketing server?</p> <p>13 A. Yes. The Outbound Marketing server sits</p> <p>14 between the applications and the database.</p> <p>15 Q. Okay. So, campaign management is -- we could</p> <p>16 also say it's a functionality that the business users</p> <p>17 have when they're sitting at their computer, is that</p> <p>18 right?</p> <p>19 A. Yes, actually, your campaign, reporting and</p> <p>20 data mining Web pages. Campaign management takes place</p> <p>21 out there.</p> <p>22 Q. Okay. Have you actually used the software, the</p> <p>23 outbound Marketing software?</p> <p>24 A. I think we made an attempt very early on, but</p> <p>25 it didn't work out very well. So, no, we haven't used</p>

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1 it directly.

2 Q. So, when the business user is performing the
3 campaign management function, they interface with the
4 system through a Web page, what would comprise the
5 campaign management subsystem?

6 A. Campaign management subsystem will be that part
7 that handles the -- defines the Web pages that are used
8 for the campaign management.

9 Q. The part of the system that defines the Web
10 pages that are used for campaign management?

11 A. Yeah. Well, these users are getting Web pages,
12 and the Web pages that they're getting have to be
13 defined in the system, and that part of the system that
14 handles the campaign management will be that part of it
15 that's responsible for those pages.

16 Q. Do you know where that part of the system is
17 that handles campaign management?

18 A. Specifically, no.

19 Q. Is it possible that it's within Outbound
20 Marketing server?

21 A. I think we're just going to go in circles,
22 again, about this, in the sense that you're talking
23 about it. Again, it's like the other stuff, it's
24 possible that you can identify it that way, but I don't
25 think that it's properly identified that way.

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1 Q. So, even if in my view I would say it's within
2 the Outbound Marketing server, that wouldn't change your
3 opinion that it's, nonetheless, separate and coupled to,
4 as the claims use that language, is that what you're
5 getting at?

6 A. Correct. Right.

7 Q. Now, you also said that the Outbound Marketing
8 server sits been the Web applications and the data mart?

9 A. Yes.

10 Q. Does it perform the database management
11 functionality?

12 A. It interfaces with the database management
13 system, yes. Doesn't perform the database management
14 functionality, but interfaces to the database systems.

15 Q. So there would be something here similar to the
16 data access engine that we talked about with IA?

17 A. The EpiMart. The EpiData Mart.

18 Q. Okay. So the EpiMart is the --

19 A. The EpiData Mart is the database management
20 system, has the multiple -- the EpiMart, the Epi Meta
21 Data Mart and the Epi OP data.

22 Q. How does that sophisticated database management
23 facilitate a phase of the sales process?

24 A. This is the information that's being put out to
25 everybody to do their work. This facilitates it by

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1 informing people of what's happening in their marketing
2 operations, what's happening in their sales operations,
3 what they plan for their campaigns, what they want to
4 do. It's the -- again, the rudimentary or fundamentals
5 of the sales process.

6 Q. When you say that, does the EpiMart do
7 something in addition to extracting data from the data
8 sources in response to queries and passing it back to
9 other parts of the system?

10 MR. SPANGLER: Objection, form.

11 A. It covers a fair amount of ground, but beyond
12 the EpiMart, the Epi Channel underneath it interfaces to
13 the external systems, as it's shown here in the chart,
14 or in this page 27 in the Outbound Marketing
15 Architecture.

16 But the EpiData Mart identified as the
17 management or control of those three databases or three
18 gross databases, yes, it does more than just serve
19 things out for responses to the data manager.

20 Q. What else does it do?

21 A. It's got to load the information in, for one
22 thing. The control and management of how the system
23 works is part of this. You have the Epi Channel Service
24 that works with it to get the information inside, and
25 the Epi Channel below it that gets the external

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1 information that brings it in here.

2 Q. The OLAP?

3 A. Uh-huh.

4 Q. Where would that functionality reside within
5 this diagram?

6 A. Well, as we had the campaign management is
7 under the campaign part of the business users block out
8 there, the reporting would, among other things, include
9 the OLAP reporting.

10 Q. And the predictive analytics?

11 A. The predictive analytics, the -- I believe is
12 not really identified well here.

13 Q. Do you have an understanding of where it is in
14 the system or how it's carried out by the system?

15 MR. SPANGLER: Objection, form.

16 A. I have some understanding that it's -- from
17 other places in here, if you'd like for me to find
18 something, I can try, but that the predictive analytics
19 is using the information both from the Epi Mart and the
20 Epi Meta and the Epi OP databases to give, for lack of a
21 better term, predictive analysis of the marketing
22 operations.

23 Q. And you think that's occurring somewhere, just
24 not really --

25 A. I don't think it's called out here, and I don't

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<p>1 believe it fits in the business users. It would be a 2 service that's more accurately, I believe, associated 3 with the reporting. 4 Q. Okay. When we talk about the reporting, you 5 said, again, that's out on the website, at least to some 6 degree, is that right? 7 A. Yes. 8 Q. So, user interacts with that through what, just 9 a regular browser, Internet Explorer or -- 10 A. I believe so. That you're using Web pages 11 there in much the same way that you were operating with 12 the IA Manager, that you're serving out the Web page. 13 Q. So, now, if we're talking about the reporting, 14 I think you said that OM has some relatively robust 15 reporting capabilities? 16 A. Yes. 17 Q. That's obviously not Internet Explorer that's 18 doing the actual, I guess, computation -- 19 A. Correct. 20 Q. -- of the reporting, is that right? 21 A. (Witness nods head.) 22 Q. Is there something else on the user's computer 23 that's actually generating the report? 24 MR. SPANGLER: Objection, form. 25 A. I'm sorry. Something else on the user's</p>	<p>1 Q. What is -- if I get a report, is it just HTML 2 that's passed to the user's computer that defines just 3 the content of the report? 4 MR. SPANGLER: Objection, form. 5 A. Only as you ask that question I think about it. 6 That's essentially true, yes. 7 Q. Okay. So, to get to the report that ended up 8 on my computer, if we kind of work backwards, there had 9 to be, I assume, some data set that I wanted a report 10 about and then some processing of that data set to get 11 from the raw data to the report. 12 MR. SPANGLER: Objection, form. 13 A. Yes. Let me see if I can walk through this and 14 see if we're on the same page here. What we're talking 15 about is that the -- on the Web page, you enter 16 information that describes the conditions or parameters 17 of the report that you're after, whatever marketing 18 campaign you're interested in seeing, whatever types of 19 persons you're interested in projecting a list for, any 20 number of possibilities. 21 But you have -- for that system that you're 22 working with, you have a set of Web pages that give you 23 your options, whatever they are. You fill in one of 24 those pages with the details of, again, report type, the 25 duration or time period that you're concerned with, the</p>
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<p>1 computer that's generating the report. 2 Q. I'm just trying to understand where all the 3 pieces are. So, the user sits on their computer, they 4 open up Internet Explorer, and they can, I guess, get 5 into Outbound Marketing or connect to Outbound 6 Marketing, and then they can request a report. 7 A. Right. 8 Q. I assume that that process involves at least 9 the collection of certain data, is that right? 10 MR. SPANGLER: Objection, form. 11 A. If you're asking about whether the RT Client or 12 some correlative is out there, the answer's no. 13 Q. I don't know if -- I don't think that is -- 14 A. I'm sorry. I thought that was the import of 15 your question. 16 Q. So, when the user wants a report, if I'm 17 sitting at my computer and I open up Internet Explorer 18 and I want to get a report, and I log into OM. 19 Obviously, I have Internet Explorer, that's local to my 20 computer, and it's interfacing with the Web server 21 getting -- you know, getting information, sharing 22 information back and forth between the user's computer 23 and the Web server that ultimately displays as a Web 24 page. 25 A. Correct.</p>	<p>1 types of customers that you want, et cetera. You fill 2 that in. 3 You're going to be using the http protocol, 4 again, but this is going to go directly from the browser 5 through to the Web server here, okay? And then whatever 6 the Web server does with it, and that's impenetrable in 7 the system that I looked at, back to the application 8 server and then to the Outbound Marketing server. 9 The Outbound Marketing server takes 10 whatever is the result of those three stages and uses 11 that, as it describes here, to put together the 12 reporting information and then send it back -- 13 Q. If I could interrupt you for one second and 14 make sure I'm following. 15 A. Yeah. 16 Q. When you talk about the result that's passed to 17 the Outbound Marketing server, at that point, is it 18 still in some form a request for a report? 19 A. Essentially, yes. 20 Q. Okay. 21 A. It's the information that's required to get to 22 a report. 23 Q. Okay. 24 A. Okay. And the Outbound Marketing server 25 then -- let's see if I have a description here -- I'm</p>

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<p style="text-align: right;">Page 226</p> <p>1 pretty sure that I saw something at one point that does 2 a reasonably good job of explaining what's there. This 3 is a reasonably good description here. Let's go to page 4 32. 5 Q. Okay. 6 A. Describing the Outbound Marketing server, says 7 it's "implemented as a collection of Java classes that 8 run within a Java virtual machine." 9 Q. Okay. 10 A. The Outbound Marketing server manages user 11 connections and database queries in a multi-threaded 12 fashion. The virtual machine that runs the Outbound 13 Marketing server code can be invoked as either a service 14 or console command in Windows NT server or Windows 2000 15 platform or as a daemon process or Java command on 16 supported -- I'm sorry. That's not as important there. 17 What I wanted to get down to here was 18 the -- that the Web server passes the URL requests and 19 parameters to a Web server plug-in, which communicates 20 to the J2EE application server, and that the application 21 server then routes the request to Outbound Marketing. 22 That's what I was talking about before, 23 that you have a -- you have an http type communication, 24 which is what you're going to get almost always when 25 you're working with a browser. The -- but that request</p>	<p style="text-align: right;">Page 228</p> <p>1 Q. Maybe the analytics. Well, whatever the 2 original question was, this description here, does that 3 apply to all of the services that reside on the business 4 user Web end? 5 MR. SPANGLER: Objection, form. 6 A. Something like this passes for each of them, 7 yes. 8 Q. Okay. So, this says that the Outbound 9 Marketing server is implemented as a collection of Java 10 classes? 11 A. Yes. 12 Q. So, it's essentially made up of Java classes? 13 A. Yes. 14 Q. So, when the request comes in from the user's 15 Web page, gets passed as, I guess, HTML or some 16 combination of HTML and JavaScript? 17 A. I'm sorry. You're talking about the message 18 bound from the -- 19 Q. The request from the user. 20 A. From the browser -- the request from the 21 browser won't include any JavaScript. 22 Q. Okay. So that would just be HTML? 23 A. It's actually not HTML. It's actually an http 24 type message. 25 Q. Or http.</p>
<p style="text-align: right;">Page 227</p> <p>1 goes to a Web server, which is a standard Web server 2 that can be configured in any number of ways to tweak 3 that message somehow, and the same is true of the J2EE 4 application server. 5 But once that message finally gets through 6 to the Outbound Manager, then it says, the Outbound 7 Marketing server -- sorry, Outbound Server -- the 8 Outbound Marketing server Java classes then process each 9 request by issuing optimized queries to a database 10 server on which the data mart resides, formatting the 11 results that the database server returns in HTML format 12 with embedded -- there it is -- HTML forms in JavaScript 13 routines. 14 That's the reason I was uncomfortable about 15 just saying, it's just HTML, because I was trying to 16 remember the JavaScript that goes out with it. 17 Q. Okay. 18 A. And forwarding the formatted results to the 19 J2EE application server, which then returns them back 20 through. So, that's what's going on. Again, 21 generically, generally. 22 Q. That description there, I asked you the 23 question in the context of the -- I guess the database 24 management maybe? 25 A. Yes.</p>	<p style="text-align: right;">Page 229</p> <p>1 A. Yeah. 2 Q. That's passed to OM server, eventually, 3 through -- 4 A. Ultimately, yes. 5 Q. The OM server then processes that in such a way 6 to issue an optimized query. So, it queries the 7 database for the data that it needs. This is step one 8 under that description we're looking at. 9 A. Right. 10 Q. The OM server queries the database? 11 A. That's correct. 12 Q. And then the database returns data to OM 13 server? 14 A. Correct. 15 Q. And OM server takes the results from the 16 database -- I guess, this step of issuing the optimized 17 queries to the database on which mart data resides, is 18 that the step where, I guess, the request essentially is 19 carried out? 20 So, if I put in certain parameters for my 21 report, is the optimized query, does that -- by saying 22 "optimized query," does that mean OM server is then 23 querying the database for only the information that's 24 necessary to populate the particular report that I've 25 requested?</p>

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<p style="text-align: right;">Page 230</p> <p>1 MR. SPANGLER: Objection, form.</p> <p>2 A. Well, the optimization actually involves a bit</p> <p>3 more than that. The optimization that they're talking</p> <p>4 about is not only optimization of getting just the</p> <p>5 results that you want, but you have -- what you have in</p> <p>6 here is that Data Mart is a little bit different from a</p> <p>7 standard, say, transaction database or something like</p> <p>8 that.</p> <p>9 Data Mart includes some special purpose</p> <p>10 tables. And the way these tables are put together is</p> <p>11 that people frequently ask very similar questions of</p> <p>12 these systems, and the -- one of the things that you can</p> <p>13 do in optimizing the queries is that before you actually</p> <p>14 get to the query, you build some tables that have what?</p> <p>15 Pre-calculated results; that is, take for instance</p> <p>16 something like -- people are always putting in reports</p> <p>17 asking for, you know, quarterly results. What's the</p> <p>18 results up to the end of this quarter?</p> <p>19 Without doing -- without doing the -- these</p> <p>20 accelerator type tables, you would have to go in, run</p> <p>21 through every transaction that's in the system or every</p> <p>22 detailed record that's in the system and total them all</p> <p>23 up.</p> <p>24 And so what you're doing with a quarterly</p> <p>25 reports type thing is that you take those types of</p>	<p style="text-align: right;">Page 232</p> <p>1 Q. And so that's done by the Outbound Marketing</p> <p>2 server, it constructs that query?</p> <p>3 MR. SPANGLER: Objection, form.</p> <p>4 A. Well, some of the Java classes in the Outbound</p> <p>5 Marketing server do that, yes.</p> <p>6 Q. And that request is passed to the database?</p> <p>7 A. Yes.</p> <p>8 Q. Then, whatever information was requested is</p> <p>9 returned to the Outbound Marketing server, is that</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. And then the Outbound Marketing server takes</p> <p>13 those results and formats them into an HTML to send back</p> <p>14 to the user for display on their -- in their Web</p> <p>15 browser, is that right?</p> <p>16 A. Right.</p> <p>17 Q. Doesn't that make OM server part of the -- in</p> <p>18 that case, the reporting or the subsystem?</p> <p>19 A. No. It just means that it's providing a</p> <p>20 service to it. The -- no. The fact that it -- that it</p> <p>21 assists in the process doesn't mean it's part of that</p> <p>22 system.</p> <p>23 Q. Seems to me it does a little more than assist</p> <p>24 in that process. It seems to me it's carrying out</p> <p>25 almost every critical step of the process. It's</p>
<p style="text-align: right;">Page 231</p> <p>1 numbers that you know that people are going to ask for,</p> <p>2 you build tables. And part of this optimization is a</p> <p>3 recognition of which of these tables you can use to help</p> <p>4 answer your query.</p> <p>5 So, you're not only optimizing just getting</p> <p>6 just the information that you want, but you're</p> <p>7 optimizing to eliminate some of the processing load off</p> <p>8 of the database server. The -- what you have to do to</p> <p>9 do that is that you have to be aware of which types of</p> <p>10 questions go with which of these tables.</p> <p>11 And then you -- well, as part of optimizing</p> <p>12 the query, you're selecting which of these tables you're</p> <p>13 going to use, which things have to go all the way back,</p> <p>14 and you can have more than one level of these tables</p> <p>15 involved. So, you might have to go do 20 calculations</p> <p>16 instead of 20,000, but it's still better, okay, rather</p> <p>17 than fetching a single answer, that kind of thing.</p> <p>18 Q. Okay. So, that's the optimization or part of</p> <p>19 the optimization.</p> <p>20 A. That's part of what the optimization is</p> <p>21 addressing, yes.</p> <p>22 Q. But is part of constructing that query also</p> <p>23 querying for the information that's necessary to</p> <p>24 populate the report that's been requested by the user?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 233</p> <p>1 constructing the query and it's creating the report,</p> <p>2 isn't it?</p> <p>3 A. Well, okay. The Outbound Marketing server Java</p> <p>4 classes then process each request by -- we talked about</p> <p>5 the fact that these things -- that parts of these</p> <p>6 systems are separable or separate or subsystems, and</p> <p>7 it's in here that it's clear that this stuff divides up</p> <p>8 into multiple classes that do different things.</p> <p>9 The -- I'm not sure if this is -- let me</p> <p>10 look at this a second. Part of the answer -- can I give</p> <p>11 this to you in parts?</p> <p>12 Q. Sure. We'll see how that goes, I guess.</p> <p>13 A. Okay. Part of the answer is at the bottom of</p> <p>14 page 29, take the last sort of full block there, it</p> <p>15 begins, you know, about eight lines up, Outbound</p> <p>16 Marketing server.</p> <p>17 The Outbound Marketing server is an</p> <p>18 application server that supports Outbound Marketing</p> <p>19 applications and connects those applications to the data</p> <p>20 mart. Outbound Marketing server handles user requests</p> <p>21 by doing the following: It forwards optimized queries</p> <p>22 to the database server, caching the query results,</p> <p>23 instantiating appropriate Java classes to perform</p> <p>24 application-specific calculations on those results.</p> <p>25 So, what we have here is that the Outbound</p>

<p style="text-align: right;">Page 234</p> <p>1 Marketing server is -- these Java classes that it's 2 talking about here are some of the subsystems that we're 3 talking about that -- in this case perform application- 4 specific calculations are part of the analytics that go 5 on here, and then forwarding the final results to the 6 Web-based display. 7 So, that's part of it. Let me see if I can 8 find a little bit better explanation of some of that 9 here. 10 Q. Before we go on too far, let me ask you a 11 couple of questions about that. So, are you then saying 12 that each of the Java classes is a subsystem? 13 A. I'm not saying that each and every Java class 14 is a subsystem, but yes, some of the Java classes break 15 off as subsystems of this. 16 Q. And whether or not they're a subsystem would 17 depend on what? 18 A. It's a big break. I mean, you can -- this says 19 the Java classes that are application specific. So, for 20 each of these applications, there are Java classes that 21 are associated with just those applications. And 22 that -- 23 Q. And so each one of those Java classes would 24 then be a subsystem -- a set of Java classes associated 25 with one application would be a subsystem?</p>	<p style="text-align: right;">Page 236</p> <p>1 separate set of Java classes specific to campaign 2 management, no. 3 Q. To any of the other subsystems that you've 4 identified in your report? 5 A. No, not in that way. 6 Q. Did you look for it in that way? 7 A. Did I look for it in that way? Not really, no. 8 Q. So, again, if we look at page 32, it says that 9 the Outbound Marketing server is implemented as a 10 collection of Java classes. 11 A. Correct. 12 Q. But now you're saying some of those Java 13 classes are subsystems that are separate from the 14 Outbound Marketing server? 15 A. Some of those Java classes are -- yes, they 16 qualify as subsystems, as defined here, and they are 17 coupled to the OM manager -- or OM server, sorry. 18 Q. How would you be able to identify which Java 19 classes were a subsystem for a particular function that 20 you identified in your report? 21 MR. SPANGLER: Objection, form. 22 A. I think that the -- that the documents here are 23 sufficient to describe the separation of those functions 24 of those subsystems. 25 Q. So, this document here, page 32, says that the</p>
<p style="text-align: right;">Page 235</p> <p>1 A. Yes. 2 Q. So, is there a set of Java classes, for 3 instance, that does campaign management? 4 A. I'm not sure if it identifies as campaign 5 management, but there are Java classes that are function 6 specific, that are application-specific. 7 Q. The subsystems that we identified in your 8 report -- 9 A. Right. 10 Q. -- are -- for instance, one of them is campaign 11 management. 12 A. Right. 13 Q. Correct me if I'm wrong, but I don't see 14 anything in here about Java classes. 15 A. Fair enough. 16 Q. Obviously, it's in the charts we're looking at. 17 A. Right. 18 Q. So I'm just trying to understand, where you say 19 in the report that one of the subsystems is campaign 20 management, now we're trying to unpack that a little, 21 you're talking about application-specific Java classes. 22 A. Right. 23 Q. Were you able to identify in the source code a 24 set of Java classes specific to campaign management? 25 A. I did not identify in the source code a</p>	<p style="text-align: right;">Page 237</p> <p>1 Outbound Marketing server is implemented as a collection 2 of Java classes. 3 A. Right. 4 Q. Is there anything else to the Outbound 5 Marketing server, besides those Java classes? 6 MR. SPANGLER: Objection, form. 7 A. Is there anything else to the Outbound 8 Marketing server besides Java classes? I believe it's 9 written in Java, so Java is written using Java classes. 10 Q. So, other than the hardware it resides on, the 11 OM server, is entirely the collection of JAVA classes. 12 A. Correct. 13 Q. And you identify in your report that the OM 14 server is the event manager. 15 A. Correct. 16 Q. Now you're saying that some of those Java 17 classes are subsystems. Are there other Java classes 18 that would be left, and would those Java classes then be 19 the event manager? 20 MR. SPANGLER: Objection, form. 21 A. I think that the description of which ones are 22 which is pretty clear from here. It talks about the 23 application-specific classes. It talks about which 24 classes are used to receive these communications, which 25 classes are used to build the outgoing HTML and</p>

<p style="text-align: right;">Page 238</p> <p>1 JavaScript that goes out to the -- that goes out to the 2 browser. I think that's a pretty clear demarcation of 3 which things are involved in which processes. 4 Q. I guess in kind of a theoretical sense, I 5 understand that, but are you able to identify, 6 specifically, the Java classes that relate to, for 7 instance, campaign management in the Outbound Marketing 8 source code? 9 A. You mean, by class name or by source code file 10 name? 11 Q. Yes. 12 A. No. 13 Q. No, because you didn't try, or no, you wouldn't 14 be able to even if you sat down again with the code 15 today? 16 A. If I sat down again with all the code, yes, I 17 could do that. 18 Q. But you hadn't done it prior to today. 19 A. I did not think that that was necessary, no. 20 Q. And you didn't identify in your report that it 21 was, in fact, a collection of Java classes that 22 implemented each of these functionalities that you 23 identified as subsystems, is that fair? 24 A. I think I did. It's here. It not in the body 25 of the report, but it's here, it's part of what's -- and</p>	<p style="text-align: right;">Page 240</p> <p>1 question more precisely. Can you point to anywhere in 2 either your report or Exhibit 4 to your report where it 3 states that your opinion is that the event manager in 4 Outbound Marketing is a subset of the Java classes 5 within the Outbound Marketing server? 6 A. I don't use that language. I believe that I 7 identified the fact that the Outbound Marketing manager 8 is composed of Java classes. I believe that's clear 9 from what we have here. I believe I identified the 10 portions of the Outbound Marketing manager, those Java 11 classes that do campaign management, those Java classes 12 that do the database management, those Java classes that 13 do the integrated OLAP, and the ones that do predictive 14 analytics. Those sets of classes and for each of those 15 processes I believe make up a subsystem. You know, that 16 seemed pretty good to me. 17 Q. At the time that you wrote your report, and you 18 wrote on page 57 that OM is comprised of a plurality of 19 subsystems, including campaign management, sophisticated 20 database management, integrated OLAP and predictive 21 analytics, was it at that time your opinion that, for 22 instance, the campaign management subsystem was, in 23 fact, a subset of the Java classes on the OM server? 24 A. Yes. 25 MR. SPANGLER: Objection, form.</p>
<p style="text-align: right;">Page 239</p> <p>1 it's -- you know, it's repeated endlessly. 2 Q. Well, but it's taken us what, a half hour to go 3 through this document for you to explain what your 4 theory of infringement is while we're looking at these 5 documents. 6 MR. SPANGLER: Objection, form. 7 Q. (By Mr. Dion) So, I guess I understand that 8 the information you're relying on is in here, but I'm 9 just curious where exactly in either the report or this 10 exhibit it states that your opinion is that OM infringes 11 because there is a subset of Java classes that function 12 as the event manager and separate subsets of Java 13 classes that are the subsystems that perform certain 14 functionalities? 15 MR. SPANGLER: Objection, form. What's the 16 question, again? Pretty long. 17 MR. DION: Could you read back the 18 question? 19 COURT REPORTER: The very last part? 20 MR. DION: The very last part, or do you 21 want to hear the whole thing? 22 MR. SPANGLER: Is the last part the 23 question, or is it the whole thing? I object because of 24 the 45 word question I don't get. 25 Q. (By Mr. Dion) Well, let me try to ask the</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. (By Mr. Dion) Why didn't you put that in your 2 report, then? 3 A. I didn't think it was necessary. 4 MR. SPANGLER: Objection, form. 5 Q. (By Mr. Dion) At the time you wrote your 6 report, was it your opinion that the event manager was a 7 subset of Java classes that resides on the OM server 8 that is -- at least some of those Java classes that are 9 not application-specific? 10 MR. SPANGLER: Objection, form. 11 A. I'm not sure I understood the question. I'm 12 not sure I actually understood the question. 13 Q. Okay. Well, if you look at page 58 of your 14 report, Claim 1, element a2. 15 MR. SPANGLER: Let me just ask, Joel, real 16 quick. Are you trying to dig back into the whole 17 exhibit versus report issue? Because we've testified 18 over and over, the exhibits are part of the report. 19 MR. DION: I understand. No, I'm not -- 20 MR. SPANGLER: All right. 21 MR. DION: Anything that's in the exhibits 22 is fair game. I just want to understand where the 23 opinions are disclosed. 24 Q. (By Mr. Dion) Claim 1, element a2, 25 infringement by OM. The statement in the body of the</p>

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1 report is, "the OM server (hardware and software) is an
2 event manager coupled to the subsystems."

3 Do you read that to indicate that certain
4 of the Java classes on the OM server are the event
5 manager?

6 MR. SPANGLER: Objection, form.

7 A. I'm not sure if that properly characterizes my
8 statement. What you're saying is that I didn't express
9 it in a way that you approve of, and I'm sorry about
10 that.

11 Q. I don't know that that's what I'm saying. When
12 I read this, I understand it to be your position that
13 the OM server is the event manager. And when I read the
14 documents cited in your report, I understand the OM
15 server to be a collection of Java classes, which would
16 include the application-specific Java classes.

17 MR. SPANGLER: Objection, form.

18 Q. (By Mr. Dion) Do you disagree with that
19 characterization?

20 A. No, I believe I cut those out in the previous
21 claim element.

22 Q. Where does it say that exactly?

23 A. I identified them as subsystems, the campaign
24 management, the database management, the OLAP, and the
25 predictive analytics.

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1 Q. And where is it identified that what you're
2 referring to there is application-specific Java classes?

3 A. I mean, we're going around in a circle here.

4 Q. Well, because you're telling me things are in
5 your report, and I'm having a hard time finding them.
6 So, if they're in there, I want to make sure I
7 understand where.

8 MR. SPANGLER: I'll let it go on a little
9 bit more, Joel, but I was pretty professional with your
10 witnesses. He's answered these questions a couple
11 times. I'll let it go a little bit more, then we're
12 going to have to move on.

13 A. Ask me the question again.

14 Q. Let me ask you a different question. In your
15 opinion, what part of Outbound Marketing is the event
16 manager that's referred to in Claim 1, element a2 of the
17 '525 Patent?

18 A. What part of Outbound Marketing is the event
19 manager?

20 Q. Yes.

21 A. The part of the Outbound Marketing that is the
22 event manager is that part that includes some, perhaps
23 not all, but some of the Outbound Marketing that is not
24 in these subsystems that are identified in Claim 1. The
25 identification of just which Java classes constitute the

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1 Outbound -- I'm sorry -- the OM server -- I'm sorry.
2 I've lost it. I lost the question.

3 Q. We can try to start from the beginning, again,
4 that's fine.

5 A. Start again.

6 Q. So, the question is, I just want to understand,
7 as you sit here today, your opinion as to which elements
8 of Outbound Marketing -- when I say Outbound Marketing,
9 right now, I mean the entire program, all right?

10 A. Okay.

11 Q. Which components or which elements of Outbound
12 Marketing do you believe satisfy the limitation in the
13 claim of an event manager?

14 A. Okay. Fair enough. We start with the OM
15 server. We've already excluded these subsystems. The
16 remainder of the Outbound Marketing, it's overcasting,
17 perhaps, to say it's all of it, but the remainder of the
18 Outbound Marketing constitutes an event manager.

19 Q. But when you say -- I'm sorry. I think you
20 said the remainder of the Outbound Marketing.

21 A. The marketing server, yes. Pardon me. Thank
22 you.

23 Q. So, the Outbound Marketing server is hardware,
24 and then the software is entirely Java classes. Is my
25 understanding of that correct?

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1 A. I believe that's the way that the Outbound
2 Marketing server is described, and I believe that's the
3 way it's implemented, as a set of Java classes.

4 Q. Then, when we're identifying the event manager,
5 you're excluding from the event manager any Java classes
6 within the Outbound Marketing server that are
7 application-specific.

8 A. Application -- at least for the applications I
9 described there, yes.

10 Q. And once we exclude those, there's some
11 remaining set of Java classes, and your opinion is that
12 some subset of those, but perhaps not all of them, is
13 the event manager.

14 A. Correct. That the remaining set of the Java
15 classes perform as an event manager, as described in the
16 patent claim.

17 Q. Are you able to identify with any more
18 specificity which Java classes of the OM server are the
19 event manager?

20 MR. SPANGLER: Objection, form.

21 A. I think I've already said no, that I can't
22 specify that.

23 Q. Do you think you could, if you went back to
24 look at the source code for the purpose of trying to
25 answer that question?

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<p style="text-align: right;">Page 246</p> <p>1 MR. SPANGLER: Objection, form. 2 A. I believe the answer to that is yes. 3 Q. Okay. And I'm fairly certain we covered this, 4 but just so it's, I guess, clear in this part of the 5 record, now that we have clarified the parameters, 6 the -- your opinion is that the application-specific 7 Java classes that relate, for example, to campaign 8 management are separate from the portion of the OM 9 server that constitutes the event manager. 10 A. Yes. 11 Q. How does the event manager in Outbound 12 Marketing detect a change in state? 13 A. Similar to what we were talking about with the 14 RT server. That is, the -- we talked about the messages 15 that come from the applications out at the Web browser 16 level then go through the Web server and then through 17 the J2EE server. Those messages, when they arrive at 18 the Outbound Marketing manager, the occurrence of those 19 messages, the fact that they're received is an indicator 20 of a change in state. I'm sorry. It is a -- I'm sorry. 21 It is a change in state characteristic of an event 22 occurring within the system. 23 Q. Okay. How is that change in state detected by 24 the event manager? 25 A. Although the languages are different, the</p>	<p style="text-align: right;">Page 248</p> <p>1 VIDEOGRAPHER: The time is 5:15, we're off 2 the record. 3 (OFF THE RECORD FROM 5:15 TO 5:26 P.M.) 4 (MR. ZOUZNETSOV AND MR. RYAN ARE NO LONGER IN ROOM.) 5 VIDEOGRAPHER: The time is 5:26, we're back 6 on the record. 7 Q. (By Mr. Dion) So we were talking about the 8 detecting one more change in state element in Claim 1 9 relative to OM. Maybe we should just go back through 10 that entire element. 11 A. Okay. 12 Q. I think we now have a common understanding of 13 what we're talking about as the subsystems and what 14 we're talking about as the event manager. So, I guess 15 with that understanding, if you could explain your 16 opinion as to how the event manager detects one or more 17 changes in state. 18 A. Okay. As we were talking about with the RT 19 Server, the OM Server receives messages in much the same 20 way, and it's the same receipt of the message that 21 detects -- that causes the detection in state -- I'm 22 sorry -- the detection of one or more changes in state 23 that are characteristic of an event. 24 Q. If we could, maybe we are, but I found it very 25 helpful with IA to kind of have a working example.</p>
<p style="text-align: right;">Page 247</p> <p>1 mechanism is similar. This is done in Java rather than 2 C++, but the mechanisms are similar. The fact of the 3 arrival of a message in a message cue, the creation of 4 an object is the -- is what is detected by the OM 5 server. 6 Q. So, on the OM server, is there a certain Java 7 class that has that particular functionality? 8 A. Yes. 9 MR. SPANGLER: Objection, form. 10 Q. (By Mr. Dion) Are you able to identify that 11 Java class? 12 A. No. 13 Q. Would that Java class be one of the Java 14 classes that would be part of the event manager? 15 A. Yes. 16 Q. What's the event that that change in state is 17 characteristic of? 18 MR. SPANGLER: Objection, form. 19 A. Let's work it back through. The event that 20 it's characteristic of, if we work back through the 21 analysis, similar to what we did for the IA system -- 22 excuse me. Can I take a minute here? I'm getting a 23 little bit punchy. I need just a second. 24 MR. DION: Sure. Yeah. Let's take a 25 break.</p>	<p style="text-align: right;">Page 249</p> <p>1 Could we keep -- here we're talking about generating a 2 report. Is that a workable example for us to keep 3 using, or is there a preferable one? 4 A. No. I think that will do fine. 5 Q. Okay. So, in this case, the user, through 6 their Web browser, would create and then submit a 7 request for a certain report, is that correct? 8 A. Correct. 9 Q. Then that request would go first to the Web 10 server, then to the J2EE server, then ultimately to the 11 OM server. 12 A. (Witness nods head.) 13 Q. Is that correct? 14 A. That's correct. 15 Q. Now, when that request hits the OM server, 16 that's the change in state. There was no request and 17 now there is a request. 18 A. Right. 19 Q. Ultimately, that request is then going to be 20 destined for one of the application-specific Java 21 classes on the OM server, is that correct? 22 A. I'm sorry. Is going to ultimately be what? I 23 just lost a little bit. 24 Q. Sure. That request is ultimately -- at some 25 point is going to need to, I guess, be routed to or be</p>

<p style="text-align: right;">Page 250</p> <p>1 presented to one of the application-specific Java 2 classes on the OM server. 3 A. Yes. 4 Q. Does that request go directly to the 5 application-specific Java class? 6 A. No. 7 Q. Okay. So, what happens? 8 A. Okay. Could I come back here again? 9 Q. Please. 10 A. All right. 11 Q. Are you looking at page 29, again? 12 A. Actually, I was on 23, but let me look and 13 see -- there are several expressions of this, and it may 14 be clearer here. No, I think 23 is better. 15 Q. Okay. 16 A. So, this doesn't have quite the detail. It 17 doesn't have all of the elements of the detail here, but 18 it accepts requests. When we're talking about 19 constructing an optimized query here, that construction, 20 I believe, is determining, as it says here -- remember, 21 we talked about the tables, the accelerator? 22 Q. Uh-huh. 23 A. And the cached results from the previous 24 queries. It uses that information to build these 25 optimized queries.</p>	<p style="text-align: right;">Page 252</p> <p>1 Q. And it would also be different than the 2 application specific Java. 3 A. I believe so, yes. 4 Q. And would that Java class be part of the event 5 manager? 6 A. I believe so, yes. 7 Q. Are you able to identify that one? 8 A. No. 9 Q. Okay. 10 A. I'm sorry. I kind of lost my train here. 11 Q. I'm sorry for interrupting. So, we talked 12 about accepts the request, it constructs a query. 13 A. Right. 14 Q. And I guess -- I guess continue with your 15 explanation to the next step, please. 16 A. So, the -- we're talking now, then, about -- 17 the step is that it forwards the query to the database 18 server. 19 Q. Okay. And, again, is that a separate Java 20 class that does that? 21 A. Yes. 22 Q. And, also, different than the application 23 specific Java classes. 24 A. Yes. 25 Q. Okay. And that -- is that Java class part of</p>
<p style="text-align: right;">Page 251</p> <p>1 Q. Okay. Let me cut you off for just one second. 2 The first thing you said is -- we're looking at this 3 kind of bulleted list on page 23. 4 A. Correct. 5 Q. The OM server accepts the requests that came 6 in, right? 7 A. Yes. 8 Q. Is there a certain Java class that accepts that 9 request? 10 A. Yes. 11 Q. And that's separate from the application- 12 specific Java classes. 13 A. Yes, I believe so. 14 Q. Is that Java class part of the event manager? 15 A. I believe it is, yes. 16 Q. Are you able to identify, specifically, the 17 name of that Java class? 18 A. No, I'm not. 19 Q. Okay. Then constructs an optimized query. Is 20 that a separate Java class on the OM server that 21 constructs the query? 22 A. It won't be the same one that receives the 23 message. Is that what you're asking? 24 Q. That's what I'm asking. 25 A. Okay. Yeah.</p>	<p style="text-align: right;">Page 253</p> <p>1 the event manager? 2 A. No. 3 Q. It's not part -- 4 A. You're talking about the database server? 5 Q. The Java class that forwards the query to the 6 database server. 7 A. Java class that -- no, no, the Java class that 8 does the forwarding would be part of the event 9 management. 10 Q. Okay. Thank you. 11 A. This doesn't describe the fact, but then the 12 database query server has to take the query and operate 13 on it to get the results and pass those results back to 14 the OM server. 15 Q. Okay. So, those results are then received back 16 into yet another Java class -- 17 A. Yes. 18 Q. -- on the OM server? 19 A. No, the reception -- I'm trying to remember -- 20 we may have actually looked at a little bit of this. 21 The reception comes back to the same -- I believe it 22 comes back to the same class that did the forwarding. 23 Q. Okay. 24 A. Okay? 25 Q. In any event, whichever class receives the data</p>

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<p>1 back --</p> <p>2 A. Receives the data back --</p> <p>3 Q. It would be different than the application-</p> <p>4 specific Java classes?</p> <p>5 A. Correct.</p> <p>6 Q. And it would be part of the event manager?</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 A. Okay. We have a little bit of a conflation</p> <p>10 here in the next step, because the process of caching</p> <p>11 the results of the query I think properly belongs --</p> <p>12 well, let see how to say this. Trying to avoid some of</p> <p>13 the circular stuff we'd gone through. Let me skip over</p> <p>14 that. Just go to the performs the analytical</p> <p>15 calculations.</p> <p>16 Q. Okay.</p> <p>17 A. The performance of the analytical calculations</p> <p>18 we talked about as one of the subsystems.</p> <p>19 Q. Okay.</p> <p>20 A. Okay? And the proper characterization, I</p> <p>21 believe, here is that the results that come back from</p> <p>22 the database server are repackaged and reset to present</p> <p>23 to the -- I can't remember -- the something analytics.</p> <p>24 The predictive analytics.</p> <p>25 It goes in to do the analytical processes,</p>	<p>1 involve a -- at least a separate Java class and may</p> <p>2 involve two or five or a hundred of them. They spawn</p> <p>3 massively as you go through this.</p> <p>4 Q. We can kind of maybe talk about them in chunks.</p> <p>5 A. There were literally thousands of Java classes</p> <p>6 broken up into six different areas that we looked at.</p> <p>7 Q. Okay. Now, if I followed, I think part of what</p> <p>8 you said that the calculations are performed and that</p> <p>9 data is transferred back and --</p> <p>10 A. To the OM manager.</p> <p>11 Q. And it can replace some of the other data?</p> <p>12 A. It either replaces, substitutes or supplements</p> <p>13 the data that was returned, initially, from the query to</p> <p>14 the database manager.</p> <p>15 Q. Okay.</p> <p>16 A. Okay?</p> <p>17 Q. But that is still within the OM server?</p> <p>18 A. That comes back to the OM server, yes. Well,</p> <p>19 the analytical calculations, remember, are a separate</p> <p>20 subsystem that comes back to the OM server.</p> <p>21 Q. Wait. Let me ask you about that. The</p> <p>22 analytical calculations are a separate subsystem from</p> <p>23 the event manager?</p> <p>24 A. I believe that the analytical calculations</p> <p>25 break up by application.</p>
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<p>1 and then those results, which partly replace, partly</p> <p>2 supplement the results that came back from the database</p> <p>3 manager are returned back to the OM server.</p> <p>4 Q. Okay. So, the analytical calculations are</p> <p>5 performed by the application-specific Java class?</p> <p>6 A. No. The analytical is identified as a</p> <p>7 subsystem on its own. Remember, I've got a -- the</p> <p>8 predictive analytics?</p> <p>9 Q. Right. My understanding, maybe I'm</p> <p>10 misunderstanding, my understanding was that each of</p> <p>11 those subsystems corresponds to --</p> <p>12 A. Oh, I'm sorry, I'm sorry, yes. I think I</p> <p>13 understand -- I think I understand where we are. Yes.</p> <p>14 It's application -- let's see how to say this. Fair</p> <p>15 characterization. The analytical calculations will be</p> <p>16 specific to -- when they're done will be specific to an</p> <p>17 application.</p> <p>18 Q. Okay.</p> <p>19 A. I believe that's correct.</p> <p>20 Q. Okay.</p> <p>21 A. That is outside the event manager part of the</p> <p>22 OM server.</p> <p>23 Q. Is it carried out, then, by one of the other</p> <p>24 Java classes?</p> <p>25 A. Yes. Yes. Any step that you see here will</p>	<p>1 Q. Okay.</p> <p>2 A. Okay? That is, that you're going to use</p> <p>3 different analytical calculations for different of the</p> <p>4 applications that you have.</p> <p>5 Q. When we talk about those analytical</p> <p>6 calculations, are they implemented through Java classes?</p> <p>7 A. Yes.</p> <p>8 Q. And those are on the OM server, is that right?</p> <p>9 A. Well, they're on the OM server machine, you</p> <p>10 mean?</p> <p>11 Q. Well, my understanding of the OM server is that</p> <p>12 it's a collection of Java classes, right?</p> <p>13 MR. SPANGLER: Objection, form.</p> <p>14 A. Right.</p> <p>15 Q. And we've talked about there's some subset of</p> <p>16 those Java classes that constitutes the event manager.</p> <p>17 A. Uh-huh.</p> <p>18 Q. And then there's what we've been calling the</p> <p>19 application-specific Java classes.</p> <p>20 A. Right.</p> <p>21 Q. Which, I guess my understanding was did these</p> <p>22 analytical calculations, among other things, depending</p> <p>23 on the application.</p> <p>24 A. And I think the point of confusion here was</p> <p>25 that the -- when we talk about performing the analytical</p>

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1 calculations, those -- that step -- I'm sorry -- the
 2 classes that perform the analytical calculations I
 3 believe belong to the applications, belong to the
 4 subsystems, rather than to the event manager part of the
 5 OM server.

6 Q. No, I understand that.

7 A. Okay. I'm sorry.

8 Q. My question is, though, the application-
 9 specific Java classes are not -- are separate from the
 10 event manager.

11 A. Yes.

12 Q. Are they still on the OM server?

13 A. When you say "on the OM server," it sounds like
 14 you're talking about on the computer.

15 Q. Well, are they part of the OM server?

16 A. Yeah. I believe, yes, that when you say "OM
 17 server." You include the Java classes that are a part
 18 of -- that define the applications, that make up the
 19 applications.

20 Q. Okay. I think that clears up my confusion.
 21 Thank you.

22 A. Okay. Then it talks about how the -- how the
 23 OM server takes the final results from getting the
 24 results from the database, the amendments, changes,
 25 additions, whatever from the analytical processes, and

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1 those results it then formats for the Web page display.

2 Q. Okay.

3 A. Okay? And it says formats -- forwards those
 4 formatted results through the Web browser, but it's
 5 through the J2EE server.

6 Q. Now, the formatting of the results to the Web-
 7 based display, is that also performed by the
 8 application-specific Java class?

9 MR. SPANGLER: Objection, form.

10 A. Before you asked me the question, I was
 11 thinking no, but after you asked the question, I'm not
 12 sure. I'm not sure.

13 Q. So it may be that each application-specific
 14 Java class does both its own calculations and its own
 15 formatting?

16 A. Or at least some of it. That, I'm just not
 17 sure about.

18 Q. So, it also may be that there is one set of
 19 Java classes that's just dedicated to formatting results
 20 for the Web page.

21 A. That's possible.

22 Q. If it were the latter scenario, would those, I
 23 guess, Web formatting Java classes, would those be part
 24 of the event manager?

25 A. We talked earlier about the fact that you don't

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1 necessarily have to have all of these Java classes
 2 identified as part of the event manager or as part of
 3 these other subsystems. I'm not sure that they have to
 4 be part of the event manager part of OM.

5 Q. Okay. So, these -- if there are these Web
 6 formatting Java classes, if that's the way the system
 7 works, they might just be part of OM server but not
 8 characterized in either the event manager or the
 9 application-specific databases?

10 A. I think that's possible, yes.

11 Q. There's some third category, other Java
 12 classes.

13 A. Yes.

14 Q. Okay. Now -- so, we were talking about --
 15 again, we started out talking about the detecting a
 16 change in state.

17 A. Yes.

18 Q. And we said that the -- when the request for,
 19 in our example, a particular report comes in, that's
 20 detected by one of the Java classes.

21 A. Right.

22 Q. What is the event that that change in state is
 23 characteristic of?

24 A. It -- it's actually -- it's characteristic of
 25 the request for the report.

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1 Q. Okay. So that in the next step, element c, the
 2 event manager would infer the occurrence of the event
 3 according to the claim language.

4 A. Correct.

5 Q. So, the request comes in, and how does the
 6 event manager, then, infer the occurrence of the event?

7 A. Well, again, let's go back to the sample of the
 8 RT Server, because it's almost exactly the same process.
 9 When this request comes in -- and by the time it gets
 10 here, it may not be presented exactly like an http
 11 message that we saw in the other.

12 I don't remember -- I think we did look at
 13 this, and I don't think we resolved whether it kept that
 14 format. But, nevertheless, the same type of information
 15 package comes in, and the OM Server has to take that
 16 knowledge apart in very much the same way that the RT
 17 Server did.

18 It's got to detect, you know, which report
 19 and then which parameters for the report are -- it's
 20 going to use. It has to verify -- may verify that the
 21 parameters it received are appropriate to that report
 22 and some other things that go with it before it takes
 23 that information and whatever it adds to it and passes
 24 it to the subsystem that's going to handle the
 25 preparation of that report.

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1 Q. Okay. So, in the process of unpacking that
2 message and looking at all the information that's in
3 there, the system is by that process inferring that a
4 request for a report has occurred?

5 A. Again, in very much the same way. Again, it's
6 not received wisdom, it doesn't happen instantaneously
7 or automatically, you have to take apart the pieces,
8 make sure that the pieces make sense. Some of the
9 pieces you recognize as being, is this a proper report
10 name? Is this a valid report? Is it valid under the
11 circumstances? Does this user have the authority to ask
12 for it? Do I -- you know, any number of possibilities
13 for having to qualify this before you pass it -- pass it
14 on to the database.

15 The database might be -- might very well be
16 set up to have its own set of tests that are done in --
17 subsequently to that and might catch some of the same
18 conditions, but there's no use sending the requests
19 through or getting the database to do all of this work,
20 if it's just going to be spit back -- you know, I spent
21 half a second processing this, you know, using processor
22 time here, and you can't have the information. So, you
23 try to catch that as early as you can. And in this
24 case, you do that by examining the contents of that
25 package.

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1 So, I mean, there's good reason for doing
2 the inferring, for doing the logical processes that tell
3 you what it is that you actually have to work with.

4 Q. So that process, as you've just said, that
5 tells you what it is that you have to work with --

6 A. Right.

7 Q. -- does the OM Server -- let me say that a
8 different way. Does the event manager in any way record
9 or capture the mere fact that a report was requested?

10 MR. SPANGLER: Objection, form.

11 A. Record it? I don't know. It -- again, the --
12 as it says, it detects the fact that you have a change
13 of state. The arrival of the message is what the event
14 manager detects. And so I think that's my answer. But
15 I'm now -- I'm not sure how to close the question. I
16 don't remember the exact word that you used in the
17 question.

18 Q. So I understand that the event manager detects
19 that the request came in.

20 A. Right.

21 Q. The fact that a request came in is
22 characteristic of --

23 A. An event.

24 Q. -- an event. The event is a user's requesting
25 a report.

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1 A. Correct.

2 Q. Then you said that the system infers the
3 occurrence of the event; that is, the system infers the
4 fact that a user requested a report.

5 A. Right.

6 Q. And you said it does that by reviewing the
7 information in the request.

8 A. Correct.

9 Q. Clearly, I understand that that request
10 couldn't be there but for the fact that a user requested
11 a report.

12 A. Right.

13 Q. But I guess the kind of bear fact -- we've
14 called the event that somebody made a request, and then,
15 when I look at this language, inferring occurrence of
16 the event, I'm just wondering if that bear fact that a
17 user requested a report is something that the system
18 captures in any way?

19 MR. SPANGLER: Objection, form.

20 A. I don't know whether the system -- if by
21 "capture" you mean makes a record of somehow or --

22 Q. If it did, I would certainly say yes, that's
23 capturing that information. I don't want to try to
24 limit it to something.

25 A. That's what I hear when you say "capture it."

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1 Q. Let's start with, does it do that?

2 A. The answer to that is, I don't know. I didn't
3 look for whether it recorded the -- well, let me back
4 off on that a minute, because I do know that the systems
5 keep pretty significant log records of what goes on.
6 It's at least plausible to think that it does capture
7 that. But I don't -- I didn't look for that,
8 specifically.

9 Q. Okay. The next part of this element is
10 inferring a context in which the event occurred.

11 A. Yes.

12 Q. What would be the context in this example?

13 A. Well, again, the context here, remember that --
14 you know, we're talking about requesting a report, and
15 we're kind of focused on that. But there are other
16 messages that come into the OM Server, and this one
17 requests a report.

18 Other messages request other types of
19 things from the different users. They request -- well,
20 whatever they request. They request different types of
21 things. And so part of the context of this is, again,
22 that it's a report request, as opposed to some other
23 type of request. And part of the context, again, is
24 this specific report.

25 Further information in the request will

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1 further -- you know, some of that will be related to,
2 you know, the same types of things as we talked about
3 before. If I get this message, I've identified an event
4 or I've identified a field or I've -- you know,
5 something like that.

6 Do I, for this type of report, recognize an
7 event as a proper element of the request? Do I
8 recognize field as a proper element of the request? All
9 those things go into the context. Recognition of --
10 inference of context.

11 Q. And the inference here, is it similar to what
12 we discussed in IA, which is those -- certain facts come
13 in, there's some type of rule, and then there's a
14 conclusion, which I think is the Court's construction?

15 A. Yes. That you're taking the data that comes in
16 and you're comparing it to data that describes what you
17 actually know already. I have a -- somewhere, I have a
18 list. In some form, I have a list of types of reports
19 that people can request.

20 If I get a -- for instance, it does happen,
21 you get a request that comes through, and because of an
22 electrical glitch somewhere or something else, you've
23 just garbled the name of the report that you want, it
24 says, I don't recognize the report name, try again.

25 Q. How are -- the inference of the occurrence of

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1 the event and the inference of context, how are they
2 based on the detected change in state?

3 A. And I think, again, we're back to, again,
4 almost exactly the same analysis, that they're based on
5 the change in state, the detected change in state,
6 because they rely on the change in state to start them
7 off.

8 Q. Okay. I'm going through this kind of quickly,
9 but we're running a little short on time.

10 A. I understand.

11 Q. The last element, "automatically initiating an
12 operation in one or more particular subsystems of the
13 computer to facilitate a new action based on the
14 inferred context."

15 A. Correct.

16 Q. So, to try to look at it in, I guess, the big
17 picture, first, and then maybe break it down, how does
18 OM satisfy that limitation?

19 A. In the example that we're talking about, if we
20 just go through the steps that are described here, one
21 of our subsystems is this EpiData Mart, and the OM
22 Server puts together a request for the -- for answers
23 from the EpiData Mart. And so it's initiating an action
24 in the EpiData Mart that furthers the sales -- or that
25 facilitates a stage in the sales process.

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1 Q. So, you said it's initialing an action in the
2 data mart. I think we talked earlier about use of the
3 term "operation" versus "action."

4 A. Right.

5 Q. You said --

6 A. Oh, I'm sorry.

7 Q. -- they're interchangeable, right? But in your
8 opinion, that's initiating an operation in the data
9 mart?

10 A. Yes.

11 Q. Okay. So, when the event manager constructs
12 the database query and passes it to the data mart --

13 A. Yes.

14 Q. -- that is the automatic initiation of an
15 operation in another subsystem.

16 A. Correct. The process is automatic. There's no
17 intervention by any person in the process. Once the
18 message is received, all this stuff happens by the
19 operation of the event manager.

20 Q. And what's the new action that that operation
21 facilitates?

22 MR. SPANGLER: Objection, form.

23 A. The new action that it facilitates?

24 Q. So, the claim language is automatically
25 initiating an operation in one or more particular

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1 subsystems of the computer to facilitate a new action
2 based on the inferred context.

3 A. Right.

4 Q. So we said the operation is that -- I guess the
5 database actually satisfying the query or carrying out
6 the query?

7 MR. SPANGLER: Objection, form.

8 A. Well, again, you can work through this the --
9 let's see. The operation is what the database
10 undertakes, what it does. The action, at least in the
11 example that's drawn here, could be the performance of
12 the analytical processing in the application part of the
13 system.

14 Q. Okay. How is that action based on the inferred
15 context?

16 A. Well, again, "based on" just means that it's
17 informed by or it relies on, in some part, the inferred
18 context. Remember that the context that we're starting
19 with here includes the type of report and maybe other
20 information within the system that restricts the
21 operation of the data mart, the database manager.

22 So, already you have relied on that
23 information. I don't know for sure whether any of that
24 information actually will make it all the way to the
25 analytics, but whatever gets there will have been

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<p style="text-align: right;">Page 270</p> <p>1 informed or affected by the context that came out of the 2 original message. 3 Q. Okay. Just to confirm, it's not your -- you do 4 not offer the opinion that OM has an expert system, is 5 that correct? 6 A. No, I have not offered that opinion. 7 Q. Okay. And this is going to be a really bad 8 question, but we're just running short on time, so I'll 9 ask it and we'll see if we can get an answer. 10 A. Okay. 11 Q. You also have an opinion about the integration 12 of IA with OM and how that integration creates an 13 infringing system. 14 A. Yes. 15 Q. In addition to the fact that IA, you believe, 16 infringes on its own and OM, you believe, infringes on 17 its own. Is it possible for you to explain how -- in 18 what ways that infringing system, IA integrated with OM 19 is different than either IA on its own or OM on its own? 20 MR. SPANGLER: Objection, form. 21 Q. (By Mr. Dion) You're right. 22 A. In the spirit of cooperation, I'll keep it as 23 short as I can, but the analysis is that if you once 24 have a system that includes IA, just IA, that's a 25 system -- actually, I think we discussed this with S&S</p>	<p style="text-align: right;">Page 272</p> <p>1 A. An additional subsystem, yes. I believe that's 2 correct. 3 MR. DION: Thank you very much for your 4 time and cooperation today. We are done. 5 VIDEOGRAPHER: The time is 5:58, we're off 6 the record. 7 8 9 (DEPOSITION ADJOURNED AT 5:58 P.M.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 271</p> <p>1 very early on. 2 The reasoning is very similar, that if you 3 extend this system to include OM, in this instance, I 4 believe that the exceptions that I've allowed for don't 5 apply, there's -- I don't believe that OM does anything 6 to -- you know, to suck the infringement out of IA. 7 So, I believe that any system that is a 8 superset of IA is going to wind up -- I'm sorry, again, 9 with the same qualifications I gave earlier. 10 Q. Sure. 11 A. In this case, it doesn't apply. IA with OM 12 will infringe off of the same analysis that IA by itself 13 did. 14 Q. In that infringing system of IA integrated with 15 OM, where's the event manager? 16 A. Of IA integrated with OM, the event manager, I 17 believe, is most clearly in the controlling system, in 18 the IA system. 19 Q. Okay. So, the same as your analysis on IA, the 20 event manager is the RT Server, as we've discussed 21 throughout the morning. 22 A. Correct. 23 (MR. ZAHER RE-ENTERS ROOM.) 24 Q. (By Mr. Dion) And OM becomes, essentially, 25 just an additional subsystem to IA?</p>	<p style="text-align: right;">Page 273</p> <p>1 CHANGES AND SIGNATURE 2 WITNESS NAME: J. TIPTON COLE DATE: JULY 22, 2009 3 PAGE LINE CHANGE REASON 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>

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I, J. TIPTON COLE, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

J. TIPTON COLE

THE STATE OF _____
COUNTY OF _____

Before me, _____, on this day personally appeared J. TIPTON COLE, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____,

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

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MR. JOEL L. DION.....06 HOUR(S):41 MINUTE(S)
That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

MR. DAVID PRIDHAM, Counsel for Plaintiff
MR. ANDREW W. SPANGLER, Counsel for Plaintiff
MR. HAROLD KIP GLASSCOCK, Counsel for Plaintiff
MR. RYAN BROWN, Counsel for Plaintiff
MR. ALFRED W. ZAHER, Counsel for Defendants
MR. JOEL L. DION, Counsel for Defendants
MR. BRUCE D. GEORGE, Counsel for Defendants
MR. JOHN PAUL OLEKSIUK, Counsel for Defendants

That \$_____ is the deposition officer's charges to the Defendants for preparing the original deposition transcript and any copies of exhibits;

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this _____ day of August, 2009.

NITA G. CULLEN, Texas CSR #1563
Expiration Date: 12-31-2009
Firm Registration No. 244
GWENDOLYN PARKER & ASSOCIATES
3827 Travis Street
Dallas, Texas 75204

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

SFA SYSTEMS, LLC,)
Plaintiff,)

VS.) CIVIL ACTION NO.
) 6:07-CV-67
)

INFOR GLOBAL SOLUTIONS)
(MICHIGAN), INC., et al,)
Defendants.)
)

REPORTER'S CERTIFICATION
DEPOSITION OF J. TIPTON COLE
JULY 22, 2009

I, Nita G. Cullen, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, J. TIPTON COLE, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____ to the witness or to the attorney for the witness for examination, signature and return to me by _____;

That the amount of time used by each party at the deposition is as follows:

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